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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSE SORIANO, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MARCH 12, 1956

CERTIORARI GRANTED APRIL 30, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 49

JOSE SORIANO, PETITIONER,

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THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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—406-9

[fol. 1] **IN THE UNITED STATES COURT OF CLAIMS**

No. 50127

JOSE SORIANO

v.

THE UNITED STATES

PETITION—Filed April 26, 1951

To the Honorable the Court of Claims:

The plaintiff, Jose Soriano, respectfully represents:

I. That plaintiff is of legal age, a citizen of the Republic of the Philippines, married, with residence and postal address at La Castellana, Negros Occidental, Philippines;

II. That under the laws of the Republic of the Philippines, citizens of the United States can bring suits in the Courts of the Philippines against the Republic of the Philippines on express or implied contracts;

[fol. 2] III. That pursuant to authority of the Philippine Independence Act (Act 17 January, 1933, as amended) and Sec. 12 of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by Military Order of the Commander-in-Chief, dated 26 July 1941;

IV. That after the fall of Bataan and Corregidor in 1942, elements of the United States Army Forces in the Far East, known in short as "USAFFE", refused to surrender to the military forces of the Imperial Japanese Government, which Government was then the enemy of the United States of America, (which we hereinafter refer to as the Enemy) and fled to the hills where they banded and organized themselves into guerrilla units and continued to wage military operations against the Enemy in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area until the liberation of the Philippines from the military control of the Enemy by the armed forces of the United States of America;

V. That among the guerrilla units thus organized was the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District in the island of Negros, Philippines, which unit continuously conducted military operations against the Enemy in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area;

VI. That in order successfully to prosecute military operations against the Enemy and in accordance with the Rules of Land Warfare published by the United States War [fol. 3] Department and/or in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area aforesaid guerrilla unit, through its authorized officers, requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods and merchandise from various persons;

VII. That the plaintiff, at various times, from September, 1942 to January, 1945 delivered to aforesaid guerilla unit through its authorized officers various quantities and description of foodstuffs and food supplies, equipment, goods, and merchandise, the then reasonable market value of which equaled or exceeded the total amount of Two Hundred Thirty Nine Thousand and Five Hundred Thirty One Pesos and Fifty Centavos (₱239,531.50) currency of the Republic of the Philippines or One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), United States currency, that an itemized statement showing kind, quantity, and value of these various foodstuffs and food supplies, equipment, goods other merchandise commandeered, the dates of the various commandeerings and the names of the various authorized commandeering officers is attached to and made a part of this petition and is marked Exhibit "A";

VIII. That at the time the various foodstuffs and food supplies, equipment, goods and merchandise in Exhibit "A" were commandeered corresponding receipts were issued to the plaintiff and it was clearly understood and [fol. 4] agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the U. S. Army of which said unit was an authorized element;

IX. That plaintiff has not been paid for the above-mentioned foodstuffs and food supplies, equipment, goods and merchandise;

X. That plaintiff filed a claim for payment of the commandeered property mentioned in Exhibit "A" with the Claims Service of the U. S. Army on March 30, 1948 which claim was, however, denied on June 21, 1948; that pursuant to the request of the said Claims Service of the U. S. Army, the original receipts referred to in paragraph VIII were turned over to said Claims Service, which has declined to return them to the plaintiff; that the reason of the disapproval by said Claims Service to pay plaintiff's claim was because the evidence on file was insufficient to establish the validity of the claim to warrant payment; that the said claim bears the file number G-7-194, 785-CG-91 in the U. S. Army Headquarters Philippine-Ryukyus Command, Office of the Chief of Claims Service;

XI. That there has been no assignment or transfer of this claim or any part thereof and that the plaintiff is justly entitled to recover from the defendant the amount of One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), U. S. currency; that there are no credits or set-offs thereto;

[fol. 5] XII. That the plaintiff did not at any time and in any way voluntarily aid or give encouragement to the enemies of the United States and that at the time the commandeerings were made the plaintiff owed and bore true allegiance to the United States; that at the present time plaintiff owes allegiance to the Republic of the Philippines;

XIII. That the plaintiff's right to recovery is based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof;

XIV. That among the laws authorizing the contract and recovery are the Fifth Amendment to the Constitution of the United States of America; the Act of October 16, 1941 c. 445, 55 Stat. 742; the First War Powers Act (The Act of December 18, 1941) c. 593, 55 Stat. 838; Executive Orders 9001; the Confirmation and Clarification of the Authority of Theater Commanders as explained in Circular No. 53 of February 21, 1945 of the U. S. War Department and the Inherent Powers of Theater Commanders; the

Rules of Land Warfare; and other regulations of the U. S. War Department;

XV. That plaintiff, at the time of the claim against the defendant first accrued, was living in the Philippines and remained there from that time throughout the entire occupation of the Islands by the Japanese military forces during all of which period the American courts were inaccessible to him; that plaintiff since the time the claim first accrued up to the present has never gone, resided or done business in the United States.

[fol. 6] XVI. That the plaintiff believes the above facts to be true.

Wherefore, it is respectfuly prayed that this Honorable Court render judgment in favor of the plaintiff in the sum of One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), U. S. currency, plus interest from March 30, 1948 and grant such other and further relief as may be just and equitable in the premises.

Jose Soriano, By Frederic P. Lee, Attorney, Lee, Toomey & Kent, 1200 18th Street, N. W., Washington 6, D. C.

Of Counsel: Gibbs, Gibbs, Chuidian & Quasha, Suite 207, Singson Building, Plaza Moraga, Manila, Philippines.

[fol. 7]

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANA

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
2 Dec. '42	Pfc. R. Catolico	265	cavans palay	₱10.00	₱2650.00
-do-	-do-	10	cavans polished rice	23.00	230.00
-do-	-do-	6	heads cattle	180.00	1080.00
-do-	-do-	5	carabaos	200.00	1000.00
-do-	-do-	1	horse	250.00	250.00
-do-	-do-	25	cavans corn	6.00	150.00
-do-	-do-	6	sacks camote	10.00	60.00
-do-	-do-	6	sawales (amakan)	10.00	60.00
14 Dec. '42	-do-	500	pcs bangos	2.00	1000.00
-do-	-do-	268	cavans palay	10.00	2680.00
-do-	-do-	5	carabaos	200.00	1000.00
-do-	-do-	6	cows	200.00	1200.00
-do-	-do-	24	cavans corn	7.00	168.00
-do-	-do-	15	sacks camote	10.00	150.00
16 Dec. '42	-do-	1	sack camote	10.00	10.00
-do-	-do-	2	chairs	50.00	100.00
-do-	-do-	3	carabaos	200.00	600.00
-do-	-do-	175	cavans palay	10.00	1750.00
28 Dec. '42	-do-	2	batteries 6 volts	50.00	100.00
-do-	-do-	1	can kerosene (cock)	40.00	40.00
-do-	-do-	1	bat. charger 6 volts	170.00	170.00
-do-	-do-	120	cavans palay	10.00	1200.00
-do-	-do-	2	bull carts	120.00	240.00
-do-	-do-	4	cows	180.00	720.00
-do-	-do-	5	carabaos	200.00	1000.00
2 Jan. '42	-do-	150	cavans palay	10.00	1500.00
-do-	-do-	3	cows	180.00	540.00
-do-	-do-	4	carabaos	200.00	800.00
4 Jan. '42	-do-	74	cavans palay	10.00	740.00
-do-	-do-	10	cavans polished rice	20.00	200.00
-do-	-do-	8	cavans corn	6.00	48.00
-do-	-do-	7	sacks camotes	10.00	70.00
-do-	-do-	6	cattles	200.00	1200.00
-do-	-do-	2	carabaos	200.00	400.00
					₱23,106.00
28 Nov. '42	Sgt. P. Rojo	300	cavans palay	10.00	3000.00
-do-	-do-	6	cows	100.00	600.00
5 Feb. '43	-do-	200	cavans palay	10.00	2000.00
-do-	-do-	2	carabaos	200.00	400.00
25 Nov. '42	-do-	1500	pcs bangos (fresh)	1.50	2250.00
-do-	-do-	200	pcs kikilo	1.00	200.00
2 Feb. '43	-do-	1000	pcs bangos	1.50	1500.00
-do-	-do-	10	gantas shrimps	4.00	40.00
4 Apr. '43	-do-	1300	pcs bangos	1.50	950.00
-do-	-do-	500	pcs shrimps (locon)	1.00	500.00
-do-	-do-	800	cavans palay	12.00	9600.00
7 Apr. '43	-do-	6	carabaos	200.00	1200.00
25 Apr. '43	-do-	600	cavans palay	12.00	7700.00
25 -do-	-do-	1000	pcs bangos	1.50	1500.00
					31,940.00

[fol. 7]

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
24 Feb. '43	Lt. M. Isada	700	cavans palay	15.00	10,500.00
-do-	-do-	5	heads of cow	150.00	750.00
18 Mar. '43	-do-	500	cavans palay	15.00	7500.00
-do-	-do-	4	heads carabaos	200.00	800.00
3 Jan. '43	-do-	2500	pcs dried bangos	1.50	3750.00
-do-	-do-	3000	shrimps (big size)	1.00	3000.00
				Total—	₱26,300.00
19 Mar. '43	Lt. M. Isada	2	sacks camote	₱10.00	₱ 20.00
-do-	-do-	3	hds. cows	150.00	450.00
-do-	-do-	3	bunches bananas	5.00	15.00
-do-	-do-	11	pcs. Jackfruit	1.00	11.00
5 Mar. '43	-do-	300	cavans palay	12.00	3600.00
-do-	-do-	3	hds. cows	150.00	450.00
-do-	-do-	20	sacks sugar	50.00	1000.00
2 Feb. '43	-do-	800	pcs. bangos	2.00	1600.00
-do-	-do-	60	pcs. bamboos	2.00	120.00
-do-	-do-	15	pcs. crabs	1.00	15.00
-do-	-do-	3	gts. shrimps	10.00	30.00
19 Jan. '43	-do-	750	bangos	1.50	1125.00
-do-	-do-	50	pcs. crabs	2.00	100.00
-do-	-do-	100	cavans palay	12.00	1200.00
				Total—	₱ 9,736.00
24 Nov. '42	Sgt. M. Deocadiz	500	ears corn	.05	25.00
-do-	-do-	469	pcs. bangos	1.50	853.50
-do-	-do-	16	gts. shrimps	5.00	80.00
-do-	-do-	267	cavans palay	10.00	2670.00
-do-	-do-	5	hds. carabaos	200.00	1000.00
-do-	-do-	3	hds. cows	100.00	300.00
3 Feb. '43	-do-	217	cavans palay	12.00	3604.00
-do-	-do-	13	cavans rice	30.00	390.00
-do-	-do-	23	cavans corn	15.00	345.00
-do-	-do-	2	bull carts	50.00	100.00
-do-	-do-	5	hds. carabaos	200.00	1000.00
-do-	-do-	2	hds. cows	100.00	200.00
29 Nov. '42	-do-	6	hds. carabaos	200.00	1200.00
-do-	-do-	2	hds. cattles	100.00	200.00
-do-	-do-	185	cavans palay	12.00	2220.00
-do-	-do-	12	cavans rice	30.00	360.00
-do-	-do-	30	cavans corn	15.00	450.00
-do-	-do-	3	bull carts	50.00	150.00
				Total—	₱15,147.50
5 Mar. '43	Pfc. P. Catolico	260	cavans palay	8.00	2080.00
-do-	-do-	4	hds. carabaos	200.00	800.00
-do-	-do-	2	tables	150.00	300.00
-do-	-do-	6	chairs	30.00	180.00
1 Mar. '43	-do-	4	chairs	40.00	160.00

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
-do-	-do-	1	table	150.00	150.00
-do-	-do-	1	bull cart	450.00	450.00
-do-	-do-	1	head carabao	350.00	350.00
3 Feb. '43	-do-	4	heads cows	270.00	1080.00
-do-	-do-	7	heads carabaos	350.00	2450.00
				Total—	₱ 8,000.00
fol. 9]					
Aug '44	Lt. F. Gareza	500	cavans palay	12.00	6000.00
-do-	-do-	3	heads carabaos	250.00	750.00
1 Sep. '44	-do-	100	cavans palay	12.00	1200.00
-do-	-do-	2	heads cows	200.00	400.00
9 Mar '44	-do-	2	heads cows	200.00	400.00
7 Oct. '44	-do-	400	cavans palay	12.00	4800.00
-do-	-do-	2	heads cows	150.00	300.00
8 May '44	-do-	200	cavans palay	12.00	2400.00
-do-	-do-	1	head cow	150.00	150.00
Apr. '44	-do-	500	cavans palay	12.00	6000.00
Feb. '44	-do-	700	cavans palay	12.00	8400.00
-do-	-do-	2	heads cows	150.00	300.00
				Total—	₱31,600.00
3 June '44	Lt. F. Gareza	390	cavans palay	12.00	4680.00
-do-	-do-	1	head cow	150.00	150.00
				Total—	₱35,930.00
5 Apr. '43	Pfc. S. Rojo Jr.	200	cavans dried fish	25.00	500.00
-do-	-do-	10000	pcs dried fish	.10	1000.00
-do-	-do-	5000	pcs dried fish	.10	500.00
				Total—	₱ 2,000.00
15 Dec. '42	Lt. P Dy	2	heads carabaos	200.00	400.00
-do-	-do-	27	cavans palay	6.00	162.00
12 Dec. '42	-do-	1	head carabao	200.00	200.00
29 Nov. '42	-do-	2	heads carabaos	200.00	400.00
17 Mar. '43	-do-	1	cavan palay	6.00	6.00
9 Dec. '42	-do-	1	cavan palay	6.00	6.00
1 Oct. '43	-do-	1	adding machine	180.00	180.00
10 Aug. '43	-do-	297	gantas palay	6.00/cav.	72.00
12 Mar. '43	-do-	1	cow	150.00	150.00
21 Nov. '42	-do-	3	cavans palay	6.00	18.00
10 Mar. '43	-do-	8	cavans palay	6.00	48.00
4 Nov. '42	-do-	15	cavans palay	6.00	90.00
6 Nov. '42	-do-	2	cavans palay	6.00	12.00
8 Nov. '42	-do-	6	cavans palay	6.00	36.00
13 Dec. '42	-do-	44	cavans palay	6.00	264.00
9 Sep. '43	-do-	1	cow	150.00	150.00
16 Sep. '43	-do-	1	cow	150.00	150.00
24 Sep. '43	-do-	1	cow	150.00	150.00
8 Oct. '43	-do-	1	cow	150.00	150.00

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
27 Oct. '43	-do-	1	carabao	200.00	200.00
13 Dec. '42	-do-	5	cavans palay	6.00	30.00
11 Dec. '42	-do-	10½	cavans palay	6.00	63.00
18 Dec. '42	-do-	125	gantas palay	6.00/cav.	30.00
14 Dec. '42	-do-	170	gantas palay	6.00/cav.	42.00
16 Dec. '42	-do-	3	cavans palay	6.00	18.00
15 Dec. '42	-do-	200	gantas palay	6.00/cav.	48.00
29 Nov. '42	-do-	2	heads carabaos	200.00	400.00
27 Nov. '42	-do-	3	cavans palay	6.00	18.00
20 Sep. '43	-do-	67	cavans palay	8.00	536.00
30 Sep. '43	-do-	5	cavans palay	6.00	30.00
22 Nov. '42	-do-	1	cavans palay	6.00	6.00
27 Nov. '42	-do-	3	cavans palay	6.00	18.00
31 Nov. '42	-do-	3 cavs & 18 gts	palay	6.00/cav.	22.00
[fol. 10]					
30 Dec. '42	-do-	2	heads cow	150.00	300.00
-do-	-do-	3	heads carabaos	200.00	600.00
11 Mar. '43	-do-	4	cavans palay	7.00	28.00
16 Jan. '43	-do-	3	cows	180.00	540.00
21 May '43	-do-	8	heads carabaos	220.00	1760.00
14 Jan. '43	-do-	1	typewriter	250.00	250.00
9 Nov. '42	-do-	9	cavans palay	6.00	54.00
4 Feb. '43	-do-	174	cavans palay	8.00	1392.00
-do-	-do-	1	cow	180.00	180.00
13 Jan. '43	-do-	2	cavans palay	6.00	12.00
11 Mar. '43	-do-	6	cavans palay	6.00	36.00
20 May '43	-do-	1	radio	300.00	300.00
				Total—	₱ 9,557.00
14 Dec. '44	Lt F Gareza	3	heads cows	220.00	660.00
16 Oct. '44	-do-	1	head cow	220.00	220.00
20 Dec. '42	-do-	300	cavans palay	7.00	2100.00
-do-	-do-	2	heads cows	150.00	300.00
17 June '43	-do-	300	cavans palay	8.00	2400.00
-do-	-do-	2	heads cows	200.00	400.00
-do-	-do-	3	rolls barb wire	40.00	120.00
3 July '43	-do-	3	heads cows	150.00	450.00
-do-	-do-	1	pig	100.00	100.00
2 Mar. '44	-do-	250	cavans palay	10.00	2500.00
-do-	-do-	3	heads cows	220.00	660.00
8 Dec. '42	-do-	250	cavans palay	7.00	1750.00
-do-	-do-	4	cows	150.00	600.00
-do-	-do-	100	pcs empty sacks	1.50	150.00
-do-	-do-	10	piculs sugar	20.00	200.00
7 Aug. '43	-do-	5	heads cows	180.00	540.00
-do-	-do-	3	heads carabaos	200.00	600.00
2 Feb. '43	-do-	4	heads cattle	180.00	720.00
-do-	-do-	2	cans kerosene	35.00	70.00
30 Aug. '43	-do-	7	heads cattle	180.00	1260.00
-do-	-do-	1	head carabao	200.00	200.00
12 Sept. '44	-do-	2	cows	220.00	440.00
-do-	-do-	3	carabaos	250.00	750.00
-do-	-do-	1	radio set (6 tubes)	250.00	250.00

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
9 Apr. '44	-do-	200	cavans palay	10.00	2000.00
13 Aug. '44	-do-	2	heads cows	220.00	440.00
5 June '44	-do-	3	heads cows	220.00	660.00
20 Jan. '43	-do-	2	heads cows	180.00	360.00
-do-	-do-	400	cavans palay	7.00	2800.00
13 Sep. '43	-do-	3	heads cows	220.00	660.00
-do-	-do-	1	head carabao	250.00	250.00
10 Feb. '43	-do-	40	cavans palay	7.00	280.00
4 Dec. '43	-do-	700	cavans palay	8.00	5600.00
-do-	-do-	2	heads cows	200.00	400.00
30 Jan. '43	-do-	8	heads cattle	180.00	1440.00
7 Jan. '43	-do-	4	cows	180.00	720.00
-do-	-do-	2	telephone boxes	30.00	60.00
-do-	-do-	3	rolls wire	20.00	60.00
15 Oct. '43	-do-	400	cavans palay	10.00	4000.00
-do-	-do-	3	cattles	200.00	600.00
				Total—	₱37,770.00
[fol. 11-12]					
3 Dec. '42	Lt F Gareza	500	cavans palay	7.00	3500.00
-do-	-do-	3	heads cattles	180.00	540.00
-do-	-do-	3	piculs sugar	20.00	60.00
9 Oct. '43	-do-	2	cattles	220.00	440.00
-do-	-do-	1	carabao	250.00	250.00
6 July '44	-do-	300	cavans palay	10.00	3000.00
-do-	-do-	1	carabao	250.00	250.00
2 Aug. '44	-do-	250	cavans palay	10.00	2500.00
-do-	-do-	1	cow	220.00	220.00
2 Jan. '43	-do-	600	cavans palay	7.00	4200.00
-do-	-do-	50	empty sacks	1.50	75.00
-do-	-do-	1	RCA radio	300.00	300.00
-do-	-do-	1	battery 6 volts	40.00	40.00
-do-	-do-	2	heads cows	180.00	360.00
				Total—	₱15,735.00
3 Dec. '42	Lt F Gareza	400	cavans palay	7.00	2800.00
-do-	-do-	4	cows	180.00	720.00
6 Jan. '44	-do-	600	cavans palay	10.00	6000.00
17 Jan. '44	-do-	6	cows	220.00	1320.00
-do-	-do-	1	carabao	250.00	250.00
26 Jan. '43	-do-	300	cavans palay	7.00	2100.00
-do-	-do-	3	carabaos	200.00	600.00
16 Feb. '43	-do-	6	heads cattles	200.00	1200.00
2 Mar. '44	-do-	3	cows	220.00	660.00
-do-	-do-	1	carabao	250.00	250.00
30 Sep. '44	-do-	450	cavans palay	10.00	4500.00
11 Nov. '44	-do-	180	cavans palay	10.00	1800.00
6 Dec. '44	-do-	400	cavans palay	10.00	4000.00
-do-	-do-	2	cows	220.00	440.00
-do-	-do-	1	carabao	250.00	250.00
19 Jan. '45	-do-	400	cavans palay	10.00	4000.00
-do-	-do-	1	carabao	250.00	250.00
				Total—	₱46,875.00

Summary of Different Totals

Items	Commandeered by	Pfc R Catolico from 2 Jan '42 up to 28 Dec '42	₱ 23,106.00
"	"	Sgt P Rojo from 25 Nov '42 up to 25 Apr '43	31,940.00
"	"	Lt M Isada from 3 Jan '43 up to 18 Mar '43	26,300.00
"	"	" " " " 19 Jan '43 up to 19 Mar '43	9,736.00
"	"	Sgt N Deocadiz from 24 Nov '42 up to 3 Feb '43	15,147.50
"	"	Pfc P Catolico from 13 Feb '43 up to 15 Mar '43	8,000.00
"	"	Lt F Gareza from 30 Aug '44 up to 3 June '44	35,930.00
"	"	Pfc S Rojo Jr on 4 April '43	2,000.00
"	"	Lt P Dy from 30 Sep. '42 up to 21 May '43	9,557.00
"	"	Lt F Gareza from 5 June '43 up to 20 Dec '44	37,770.00
"	"	" " " " 3 Dec '42 up to 30 Sep '44	46,875.00
			₱239,531.50

GRAND TOTAL . . . . ₱239,531.50

[fol. 13] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S ANSWER—Filed May 26, 1952

For its answer to plaintiff's petition, defendant

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph I of the petition.

2. Admits all of the allegations contained in par-graphs II and III of the petition.

3. Admits that after the fall of Bataan and Corregidor in 1942 and the surrender of all United States Armed Forces and Philippine Army Forces, some individuals and groups of individuals who had served with the United States Armed Forces escaped the military forces of the Imperial Japanese Government, which was then in control of the Philippine Islands, and fled to the hills where they subsequently carried on harassing operations against the Japanese Imperial Forces as a part of the resistance move-
[fol. 14] ment against the Japanese then being conducted in the Philippines, which resistance continued until the liberation of the Philippines, but denies the remaining allegations contained in paragraph IV of the petition.

4. Denies all the allegations in paragraph V of the petition, except that defendant alleges that the 1st Bn. 76th Inf. Reg. 7th Military District, Negros Island, was one of the guerrilla units in the resistance movement referred to in paragraph 3 hereof, which unit, on August 12, 1947, was retroactively recognized as of November 17, 1942, as an

element of the Philippine Army pursuant to President Osmena's Executive Order No. 21 of October 1944.

5. Denies the allegations contained in paragraphs VI, VII, and VIII of the petition.

6. Admits the allegations contained in paragraph IX of the petition.

7. Denies the allegations contained in paragraph X of the petition, except that defendant admits that the claim bears file No. G-7-194,785. Defendant alleges that plaintiff, through an attorney in fact, filed a claim for payment of the property listed in Exhibit A, with certain minor variations, with the Claims Service of the United States Army on March 31, 1948, which claim was initially denied on June 21, 1948; that plaintiff voluntarily attached the receipts to his claim form; that on July 20, 1948, plaintiff's attorney-in-fact filed a request for reconsideration, which request was denied on June 21, 1949.

[fol. 15] 8. Denies knowledge or information sufficient to form a belief as to the allegation contained in paragraph XI of the petition, save that it specifically denies that plaintiff is entitled to recover $119,765.75, or any other amount.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph XII of the petition.

10. Asserts that the allegations contained in paragraphs XIII and XIV are conclusions of law which require no answer, but if they be deemed to be allegations of material fact, they are denied.

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph XV of the petition.

As a first affirmative defense to plaintiff's cause of action:

12. On or about March 31, 1948, plaintiff, through an attorney-in-fact, filed a claim with the Army Claims Service, Philippine Islands, to which he attached receipts in support thereof, for the amount of ₱239,531.50 ($119,765.75) for supplies delivered to and used by the 7th Military District's recognized guerrillas, which claim is the same claim in this case.

13. In the aforesaid claim, plaintiff's attorney-in-fact, who defendant alleges upon information and belief was

plaintiff's son-in-law, stated under oath that the property was delivered to and used by the said guerrilla unit.

[fol. 16] 14. The aforesaid claim was supported by false and fraudulent receipts bearing the signature of one Felix Gareza, the said receipts being those referred to in Exhibit A, pages 10-11, of plaintiff's petition, as items alleged to have been commandeered by Lt. F. Gareza.

15. The plaintiff, through a duly authorized agent, knowingly and deliberately filed the claim in an attempt to defraud the United States, and has corruptly practiced or has attempted to practice fraud against the United States in violation of the Act of March 3, 1941, 36 Stat. 1141, Title 28 U.S.C. 2514, and by reason thereof said claim has been forfeited to the United States.

As a second affirmative defense to plaintiff's cause of action:

16. Defendant alleges that plaintiff's cause of action, if any, is against the Philippine Government inasmuch as the alleged requisitioning was done by members of the 7th Military District Guerillas, said guerrillas being retroactively recognized as elements of the Philippine Army under the provisions of President Osmena's Executive Order No. 21, and that accordingly this Court has no jurisdiction to hear plaintiff's claim as the claim is not one against the United States.

As a third affirmative defense to plaintiff's cause of action:

17. Defendant alleges that the action was not commenced within six years after the accrual of the claims, if any, set [fols. 17-18] forth in the petition and that they are barred by the statute of limitations, 28 U.S.C. 2501.

Wherefore, defendant prays that the petition be dismissed and that the Court specifically find that the plaintiff practiced or attempted to practice fraud against the United States in violation of the provisions of the Act of March 3, 1911, 36 Stat. 1141, 28 U.S.C. 2514, and render judgment of forfeiture, as required by law.

Respectfully submitted, Holmes Baldridge, Assistant Attorney General, Thomas O. Fleming, Attorney for Defendant.

[fol. 19] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

REPLY—Filed September 4, 1952

For reply to defendant's first affirmative defense plaintiff admits, denies, and alleges as follows:

I. Admits the allegations of paragraph 12, except he alleges that his claim was filed on or about March 30, 1948, and that the original receipts supporting the claim were turned over to the Claims Service at its request.

II. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13, for the reason that the document referred to is not in his possession.

[fol. 20] III. Denies the allegation contained in paragraph 14 that the claim was supported by false and fraudulent receipts, and denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph 14, for the reason that the documents referred to are not in his possession.

IV. Asserts that the allegations contained in paragraph 15 are conclusions of law which require no answer; but if they be deemed in whole or in part allegations of material fact they are denied.

Wherefore, it is prayed that the affirmative relief prayed for by respondent in his answer be denied.

Frederick P. Lee, Lee, Toomey & Kent, 1200 18th Street, N. W., Washington 6, D. C., Attorney for Plaintiff.

Of Counsel: Gibbs & Chuidian, Singson Building, Manila, Philippines.

[fol. 21] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS—
Filed August 8, 1955

Without waiving any defenses previously asserted in this action, including specifically the plea of fraud, defendant moves that the petition herein be dismissed on the ground that plaintiff's cause of action, if any, is against the Republic of the Philippines and not against the United States. In support of this motion, defendant submits the attached memorandum.

Defendant's Memorandum in Support of Its Motion for Judgment on the Pleadings

This is an action to recover the value of certain foodstuffs and supplies allegedly furnished by plaintiff to the members of a guerrilla unit in the Philippines.

Defendant admits that the 1st Battalion, 76th Infantry Regiment, 72nd Division, 7th Military District, Negros Island, Philippines, was recognized by the United States Army on August 12, 1947, as having been an element of the Philippine Army, from November 17, 1942. Answer, [fol. 22] par. 4). Plaintiff alleges that at various times from September, 1942 to January, 1945 he delivered to the aforesaid 1st Battalion, 76th Infantry Regiment, through its authorized officers, various quantities of foodstuffs and supplies, and that the then reasonable market value of which equalled or exceeded the total amount of ₱239,531.50 in terms of Republic of the Philippines currency or $119,765.75 in terms of United States currency; that at the time the various foodstuffs and supplies were commandeered, corresponding receipts were issued to the plaintiff and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army; and that plaintiff has not been paid for the above mentioned foodstuffs and supplies.

Argument

This Court has held that members of guerrilla units, whether those units were recognized or not, never became members of the Army of the United States, "nor were they authorized to bind the United States in any respect." *Logronio* v. *United States,* C. Cls. No. 354-54, decided July 12, 1955. Assuming the truth of plaintiff's allegations that he furnished foodstuffs and supplies to a guerilla unit, plaintiff's right of action, if any, is against the Republic of the Philippines and not against the United States. *Logronio* v. *United States, supra, Bardoquillo* v. *United States,* C. Cls. No. 599-52, decided July 12, 1955.

Conclusion

For the reason set forth above, the Court is without jurisdiction to entertain the action, and defendant is entitled [fol. 23] to have the petition dismissed and costs taxed against the plaintiff as provided by law.

Respectfully submitted, Geo. S. Leonard, Acting Assistant Attorney General, Civil Division.

Walter Kiechel, Jr., Alfred H. O. Boudreau, Jr., Attorneys, Civil Division, Department of Justice.

[fol. 24] ARGUMENT AND SUBMISSION OF CASE

On December 5, 1955, the case was argued and submitted on defendant's motion for judgment on the pleadings, by Mr. Walter Kiechel, Jr. for the defendant and by Mr. Prew Savoy for the plaintiff.

[fols. 25-26] IN THE UNITED STATES COURT OF CLAIMS

No. 50127

JOSE SORIANO

v.

THE UNITED STATES

ORDER OF THE COURT ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS—December 16, 1955

This case comes before the court on defendant's motion for judgment on the pleadings urging dismissal of plaintiff's

petition on the authority of the decision in *Logronio v. The United States,* No. 354-54, decided July 12, 1955, and, upon consideration thereof,

It is ordered this sixteenth day of December, 1955, that defendant's motion for judgment on the pleadings be and the same hereby is granted and plaintiff's petition is dismissed.

By the Court (S.) Benjamin H. Littleton, Acting Chief Judge.

[fol. 27] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 28] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 30, 1956

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is transferred to the summary calendar. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(406-9)

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IN THE

Supreme Court of the United States

October Term, 1956

No. ~~700~~ 49

JOSE SORIANO, *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PREW SAVOY
Counsel for Petitioner.

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Order 27a

IN THE

Supreme Court of the United States

October Term, 1956

No.

JOSE SORIANO, *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Prew Savoy, on behalf of Jose Soriano, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims dismissing the petition in the above-entitled cause, entered December 16, 1955.

OPINIONS BELOW

The opinion of the Court of Claims is based upon its Opinion in *Eleuterio Logronio* v. *The United States,* reported in 133 F. Supp. 395, which reversed its opinion in *Victorio* v. *United States,* reported in 106 F. Supp. 182, which superseded its opinion in *Victorio* v. *United States,* 91 F. Supp. 748.

JURISDICTION

The right to sue in the United States Court of Claims is found in sections 1491 and 2502 of the Judicial Code; Tit. 28 USCA, 1491, 2502.

The judgment of the United States Court of Claims was entered December 16, 1955. Application to the said Court for a Transcript of the Record was timely filed.

STATUTES—PRESIDENTIAL MILITARY ORDERS AND PROCLAMATIONS—MILITARY ORDERS

The Statutes, the Presidential Military Orders and Proclamations, and the Military Orders involved will be found in Appendices A to C.

QUESTION PRESENTED

Do the facts, as disclosed by the Record and admitted for the purpose of Defendant's Motion for Judgment on the Pleadings, under the Constitution of the United States and the laws and decisions applicable, establish:

That the personnel of the Philippine Army, called into the service of the armed forces of the United States by Military Order of the President of the United States, and subsequently by the Commanding Officer of the Armed Forces of the United States in the Philippines, who answered the call, did not surrender, but fought as organized guerrillas, who were subsequently recognized by the Commander-in-Chief of the armed forces of the United States in the Philippines, as authorized elements of United States Army Forces in the Far East, were part of the armed forces of the United States, so that the requisitions for their sustenance for which the requisitioning officers

agreed that the United States Army would pay created a debt of the United States for which the United States is liable?

STATEMENT

The facts are, as follows:

(1) Petitioner is of legal age, a citizen of the Republic of the Philippines, with residence and postal address at La Castellana, Negros Occidental, Philippines.

(2) Under the laws of the Republic of the Philippines, citizens of the United States can bring suits in the Courts of the Philippines against the Republic of the Philippines on express or implied contracts.

(3) Pursuant to authority of the Philippine Independence Act (March 24, 1934), 48 Stat. 456) and Sec. 2(a)(12) of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by Military Order of the Commander-in-Chief, President Franklin D. Roosevelt, dated 26 July 1941, and was integrated therein by general orders of the Commanding General of the United States Army Forces for the Far East, known in short as "USAFFE". (App. B & C)

(4) After the fall of Bataan and Corregidor, in 1942, elements of USAFFE refused to surrender to the military forces of the Imperial Japanese Government, which Government was then the enemy of the United States of America, (which we hereinafter refer to as the Enemy) and fled to the hills where they banded and organized themselves into guerrilla units and continued to wage military operations against the Enemy in accordance with the express or implied au-

thority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area, (USASPA) having sworn allegiance to the United States of America, until the liberation of the Philippines from the military control of the Enemy by the armed forces of the United States of America.

(5) Among the guerrilla units thus organized was the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District in the Island of Negros, Philippines, which unit continuously conducted military operations against the Enemy in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area, its leader having sworn allegiance to the United States of America and the men having in turn been so sworn.

(6) In order successfully to prosecute military operations against the Enemy and in accordance with the Rules of Land Warfare published by the United States War Department and/or in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area the aforesaid guerrilla unit, through its authorized officers, requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods and merchandise from various persons.

(7) Petitioner, at various times, from September, 1942, to January, 1945, delivered to the aforesaid guerrilla unit, through its authorized officers, various quantities and description of foodstuffs and food supplies, equipment, goods, and merchandise, the then reasonable market value of which equalled or exceeded

the total amount of Two Hundred Thirty-Nine Thousand and Five Hundred Thirty-One Pesos and Fifty Centavos (p239,531.50) currency of the Republic of the Philippines, or One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), United States currency. (An itemized statement showing the kind, quantity, and value of these various foodstuffs and food supplies, equipment, goods, other merchandise commandeered, the dates of the various requisitions by the authorized commandeering officers was attached to and made a part of the Petition to the United States Court of Claims and marked as Exhibit "A" thereto.)

(8) At the time the various foodstuffs and food supplies, equipment, goods and merchandise in Exhibit "A" were commandeered corresponding receipts were issued to the petitioner and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army of which said unit was an authorized element.

(9) Upon the return of General Douglas MacArthur to the Philippines, the members of the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District were recognized by the Commander-in-Chief Southwest Pacific Area as authorized elements of the United States Army Forces in the Far East.

(10) Petitioner has not been paid for the above-mentioned foodstuffs and food supplies, equipment, goods and merchandise, and is justly entitled to the sum of One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75).

(11) Petitioner filed a claim for payment of the commandeered property mentioned in Exhibit "A" with the Claims Service of the United States Army on March 30, 1948, which claim was, however, denied on June 21, 1948.

(12) There has been no assignment or transfer of this claim or any part thereof. There are no credits or set-offs thereto.

(13) The petitioner did not at any time and in any way voluntarily aid or give encouragement to the enemies of the United States and at the time the commandeerings were made the petitioner owed and bore true allegiance to the United States. At the present time petitioner owes allegiance to the Republic of the Philippines.

(14) Petitioner filed a petition in the United States Court of Claims on April 26, 1951.

(15) The United States Court of Claims, upon Defendant's Motion for Judgment on the Pleadings on the basis of its prior decision in *Eleuterio Logronio* v. *United States,* 133 F. Supp. 395, dismissed the petition on December 16, 1955.

(16) The claim in the *Logronio* case was barred in whole by the statute of limitations and, in addition, was barred in part by the finality provisions of the Missing Persons Act, which the Government had argued—"But instead of deciding this simple case on those simple grounds, the case is made the vehicle for overruling our former decision in the case of *Isidro Victorio* v. *United States,* 122 C. Cls. 708, (106 F. Supp. 182). That decision was arrived at unanimously, after normal deliberation. We have not been asked to over-

rule it. I think that decision was right and I cannot concur in the part of the instant opinion which overrules it." (Dissent of Judge Madden, concurring in the result.)

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Claims erred:

(1) In holding that the Philippine Army and the recognized Philippine guerillas (1st Battalion, 76th Infantry Regiment, 72nd Division, 7th Military District, in the Island of Negros, Philippines) called into the service of the armed forces of the United States, and who answered that call, were not part of the armed forces of the United States.

(2) In holding that the requisitions of the organized Philippine guerrillas—called into the service of the armed forces of the United States as part of the Philippine Army, who answered that call and who were recognized as elements of USAFFE, did not create a debt of the United States, for which the United States is liable.

(3) In failing to hold that the Philippine Army and the organized Philippine guerrillas called into the service of the armed forces of the United States, who answered that call, and who were recognized as elements of USAFFE, were part of the armed forces of the United States, so that their requisitions created a debt of the United States for which the United States is liable.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Court of Claims is in Conflict With Decisions of Other Federal Courts Involving the Basic Question as to Whether Recognized Filipino Guerrilla Units Were Part of the Armed Forces of the United States

The Court of Claims, in *Eleuterio Logronio* v. *United States,* 133 F. Supp. 395, and upon which the dismissal of the petition in the subject case is based, held that the units of the Philippine Army "called into the service of the armed forces of the United States" by the Commander-in-Chief did not thereby become a part of the Army of the United States. Thus, the Filipino guerrilla units which were organized upon surrender of the Army, and which were recognized by the Commander-in-Chief of the United States Army, South Pacific area, in 1945, as "authorized elements of the United States Army forces in the Far East," were not a part of the Army of the United States. Therefore, the requisitions during 1942-1945 by their officers, who had sworn allegiance to the United States, and who promised that the United States Army would pay, did not create a debt of the United States for which the United States is liable.

The Court of Claims was not called upon to rule on this question, but did so on its own motion, though not necessary to its decision.

This decision is in conflict with the decision in *Petition of Agustin,* 62 F. Supp. 832, and with the *dictum* of the Court of Appeals for the First Circuit, in *United States* v. *Peter You Lo Chen,* 170 F. (2d) 307, which unqualifiedly approves of the decision of the District Court in the *Agustin* case.

In the *Agustin* case, the Court had before it Section 701 of the Nationality Act of 1940, as amended, the benefit of the provisions of which is restricted to a

person "who has served or hereafter serves honorably in the military or naval forces of the United States" during World War II. (App. A)

Agustin organized the Yay Regiment, Fil-Americans, a guerrilla band—after our surrender—and fought the Enemy. Upon General MacArthur's return to the Philippines, the Yay Regiment, Fil-Americans was recognized as an authorized element of the United States Army Forces in the Far East by the Commander-in-Chief, United States Army, South Pacific Area.

Upon the basis of these facts, the Court held that Agustin had served honorably in the military forces of the United States during World War II and was entitled to citizenship, the highest honor we can bestow.

The facts respecting the Yay Regiment, Fil-Americans, are not a bit different from those respecting the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District, in the Island of Negros, except as to locale.

Both guerrilla units were similarly organized and similarly recognized by the United States Army. They naturally could not be recognized by the Philippine Army—but only by the United States Army, as part of it.

Had the question been there presented, the Court would have had to hold that requisitions of supplies by Agustin created a debt of the United States for which the United States is liable.

In the case of *Peter You Lo Chen, supra,* the Court of Appeals, referring to the *Agustin* case and after reviewing the activities of the Yay Regiment and its

formal recognition by the United States Army as an authorized element of the United States Army Forces in the Far East, said:

> "The Court properly held that the informality of the circumstances of Agustin's enlistment did not obscure the fact of his honorable and distinguished service as commanding officer of a recognized element of the United States Army, and that petitioner was entitled to be admitted to citizenship."

While a conflict cannot arise on the question of liability of the United States for requisitions of guerrillas, as only the Court of Claims can have jurisdiction, it seems clear that there does exist a conflict on the fundamental question as to whether the recognized guerrillas were a part of the Army of the United States—a question which this Court should resolve; it is the crux of the ultimate question of liability of the United States.

II. The Question Involved Has National Importance

Counsel for Petitioner could unqualifiedly state from correspondence and conversations with Filipinos that a determination of the question involved by this Court is of importance to the United States. The frantic despair and discouragement of claimants who counted on repayment by the United States Army at the end of the War, as a result of the decision of the Court of Claims in *Logronio* v. *United States, supra,* (as well as in the *Victorio* decision of 1950), has resulted in a resentment towards the United States, which should have been, and still can be, avoided. The decision is clearly wrong.

The Respondent could equally well deny, as a matter of opinion, that the question is of importance to the United States.

They would both be opinions.

For this reason, counsel for Petitioner requested the opinion of the one person believed most qualified to express an opinion on the subject—General Carlos P. Romulo—representative of the Philippines to the United Nations, formerly Commissioner of the Philippines to the United States, and now Ambassador to the United States, who was in the Philippines during the occurrence of the events. His opinion, which should be persuasive, is found in Appendix D.

(1) What did the Filipino soldier think when the President of the United States, as Commander-in-Chief, ordered the Philippine Army into the service of the Armed forces of the United States?

"But there is a legal bond between us that serves to complement the moral and emotional bond. Our troops fought, not only as Filipino soldiers but as soldiers of the Army of the United States, as American nationals fighting in defense of the American flag on soil over which the United States had full sovereignty. When they fought, were wounded, were killed, they were Filipinos, yes, but they were also American nationals.

* * * * *

"When the Philippine Army was 'called into the service of the Armed Forces of the United States' by Military Order of the President of the United States and received its orders from General MacArthur, every single soldier—while defending his native soil—felt that he was defending the American flag—the United

States of America—as well as did any soldier from the mainland."

(2) What did the supplier of the guerrillas think when his property was requisitioned?

"The suppliers believed and, in my opinion, had every right to believe, that they were supplying guerrilla units of the American Army in defense of the United States and would be paid by the United States Army."

(3) Is the subject question of importance to the United States?

"These people strongly feel, rightly or wrongly, that they have suffered an injustice at the hands of the United States Army. They feel that they supplied the United States Army, were promised payment, and that the United States Army left the Philippines without giving them a full opportunity to present their claims and without paying its obligations. Among them, their friends and families, which are indeed numerous, this cannot help but create an ill feeling toward the United States which we all hope can be avoided. There are bound to be enough problems between our two countries without having one so based.

"They feel that the Court of Claims has done them a wrong because their claims have never been heard on the merits. They cannot believe that these were not debts of the United States and they hope that your Supreme Court will decide otherwise.

"Even if they now must turn to their Government for assistance and there, by reason of agreement between the two Governments are eventually repaid, they will feel that the United States Army and its

Courts did not meet their responsibility. The elements which from time to time will seek to estrange Filipinos from the United States should not be augmented by disillusioning and embittering those who so loyally came to the assistance of the Guerrilla units of the United States Army. For this reason, I consider the matter of national importance and possibly of eventual international importance to the United States."

We do know as Americans that the Philippines constitute an important bastion in any defense against Russia from the West, if only as part of the three prong defense Japan-Guam-Philippines.

It is respectfully urged that the question as to whether the recognized Filipino guerrillas were part of the Army of the United States so that their requisitions created a debt of the United States for which it is liable is of national importance.

III. The Case Involves a Novel and Important Question of Interpreting Two Acts of Congress and Presidential Orders Issued Pursuant Thereto Not Heretofore Passed Upon by This Court

In Section (1) of the Act of June 3, 1916, (App. A) Congress has defined the Army of the United States to include the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the National Guard while in the service of the United States, and persons inducted into the land forces of the United States.

By Act of January 26, 1918, (App. A), Congress went further and provided as follows:

> "The militia and other locally created armed forces in the Philippine Islands *may be called into the service of the United States, and all mem-*

bers thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the *National Guard* into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: * * *" (Italics supplied.)

This Act was never repealed but went out of existence in 1946 with the coming into being of the Independence of the Philippines.

President Woodrow Wilson, in 1918, issued the following Proclamation under that Act. (App. B).

* * * *

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by authority of the powers conferred upon me by said Acts of Congress, do hereby *call into the military service of the United States to serve therein for the period of one month,* unless sooner discharged, as of and from the twentieth day of November, one thousand nine hundred and eighteen, *the members of one Infantry Division of the Philippine Guard, as organized under the Tables of Organization of the United States Army,* * * *". (Italics supplied.)

Thus, under the 1918 Act and the Proclamation of President Wilson, the unit of the Philippine Army so called into the military service of the United States in 1918 was part of the "Army of the United States", even though it was not so under the definition of "Army of the United States" in the Act of 1916.

Without repealing this Act or referring to it, Congress provided in Section (2)(12) of the Philippine Independence Act of 1934 (App. A), as follows:

"The Philippine Islands recognizes the right of the United States to expropriate property for

public uses, to maintain military and other reservations and *armed forces* in the Philippines, and, upon order of the President, to call into the service of *such armed forces* all military forces organized by the Philippine Government." (Italics supplied.)

President Franklin Roosevelt issued the following Military Order on July 26, 1941, under that Act and the corresponding provisions of the Ordinance appended to the Constitution of the Commonwealth of the Philippines:

"Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 45), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order *into the service of the armed forces of the United States* for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, *all of the organized military forces of the Government of the Commonwealth of the Philippines:* * * *" (Italics supplied.)

December 18, 1941, General MacArthur then issued General Orders 46, implementing that Military Order, providing:

"1. Pursuant to provisions of the Proclamation of the President of the United States, dated July 26, 1941, all personnel of the Philippine Army on active duty and all active units of the Philippine Army, *less personnel and units already accepted for service with the United States*

Army Forces, are hereby called *into the service of the armed forces of the United States* in the Philippines, effective on the date of acceptance for the period of the existing emergency, *and will be accepted for such service of officers in the service of the United States Army Forces in the Philippines.*

"2. Personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated are hereby called into the service of the armed forces of the United States in the Philippines, effective on the date of acceptance, *and will be accepted for such service by officers in the service of the United States Army Forces* in the Philippines." (Italics supplied.)

On June 29, 1946, the organized military forces of the Commonwealth of the Philippines were released "from the services of the Armed Forces of the United States" by Military Order of the Commander-in- Chief of the Army and Navy, President Harry S. Truman, five days before the independence of the Philippines. (App. B).

Thus, if the unit of the Army of the Philippines was in the Army of the United States in 1918, it seems clear that the organized military forces of the Philippines called into the service of the armed forces of the United States on July 26, 1941, and released from such service on June 29, 1946, were part of the Army of the United States during that period.

The Court of Claims says that the organized military forces of the Philippines called into the service of the armed forces of the United States, in 1941, and the guerrillas recognized as elements of USAFFE, in 1945, were not a part of the United States Army.

The Court of Claims, in its now controlling decision, seeks to draw a distinction between the Act of 1918 and that of 1934 and the Military Orders issued pursuant thereto—to differentiate between the power to order the Philippine Army into the service of the United States Army and the power to order complete units of the Philippine Army into the service of the United States Army, or, in the alternative, to draft individual members into such service—as determining the question as to whether or not the person is in the Army.

The reasoning of the Court is fantastic—for in either case, whether as part of the Philippine Army, or of a unit thereof, or individually called, the person—the Filipino—is, in all events, under the military orders of the Commander-in-Chief of the United States Army, or an area commander. He is in the Army.

The two Acts in question, the Military Orders issued under them, and the legal consequences which flowed therefrom in the Philippines in World War II, have never been considered by this Court, and the opinion of the Court of Claims respecting them is so utterly wrong that it should certainly be reviewed.

Subsequent methods of payment, limitation of rights under G. I. legislation, provided by Congress, have nothing to do with the question.

IV. Failure to Take Jurisdiction and Render a Decision Upon the Merits Amounts to a Taking of Property Without Due Process of Law, Contrary to the Constitution

The decision of the Court of Claims in effect deprives of any legal remedy citizens of a friendly foreign government whose property was appropriated and used by

the United States Army in time of war in contravention of the Constitution.

(1) The Army has and had every right and power to requisition petitioner's property in the all-out war.

(2) Petitioner had and has every right to just compensation therefor upon an implied contract, or under the guarantees of the Fifth Amendment to the Constitution of the United States.

(3) Petitioner must first have demanded payment of the Army and have had payment refused before the claim accrued and before he could sue in the Court of Claims.

(4) The Army Claims Service was set up to receive such demands for payment and determine the claims for payment on their merits. (App. E)

(5) Petitioner was given an opportunity to demand payment, demanded payment of the Army before the Claims Service established for that purpose, and payment was refused.

(6) A timely suit was filed in the Court of Claims which denied the Petition on the grounds that the requisitions were not made by and for the Army of the United States. There was a strong, well-reasoned dissent.

The Fifth Amendment is available to aliens as well as to citizens of the United States. They cannot be deprived of their property without due process of law.

The ascertainment of due process is a judicial function. (*Monongahela Nav. Co.* v. *United States*, 148 U.S. 312; *Seaboard Air Line R. Co.* v. *United States*, 261 U.S. 299; *Brooks-Scanlon Corp.* v. *United States*,

265 U.S. 106; *Richmond Screw Anchor Co.* v. *United States,* 275 U.S. 331.)

The Court of Claims shirked its duty in holding it had no jurisdiction and in not hearing this case on the merits.

One asks:

May the Army procure and use in the Philippines supplies and materials, vitally needed in the national defense during a bloody war, and then close the courts to a hearing on the merits on a pure technicality—because the Guerrillas were not drafted and did not enlist in the United States Army, on a decision of the Court of Claims—when that Court has vacillated in its own decisions and when even its members are not in agreement?

This principle involved in the clear negative answer is, in substance, recognized by the Supreme Court in the case of the *Russian Volunteer Fleet* v. *United States,* 282 U.S. 481, reversing 68 C. Cls. (1928) 28, on Motion of the Government that the Court of Claims was without jurisdiction under the Judicial Code, sec. 155 (now 28 U.S.C.A. 2502).

In its opinion, by Mr. Chief Justice Hughes, the Court said that—

> "* * * . The Provision that private property shall not be taken for public use without just compensation establishes a standard for our Government which the Constitution does not make dependent upon the standards of any other governments. The act of Congress should be interpreted in the light of its manifest purpose to give effect to the constitutional guarantee." (282 U.S. 481, 492.)

To fail to allow claimants to have their claim considered on its merits would, to paraphrase the words of the Chief Justice, (282 U.S. 481, 488), mean that "although the United States has actually taken possession of the property and was enjoying the advantages of its use" in the national defense of the country, and the alien owner was unquestionably entitled to compensation at the time of the taking, had it been practical then to determine its value, it was the intention of our Government that recovery should be denied, or at least be indefinitely postponed, until the Congress made some provision for the determination of the amount payable other than through the Court of Claims.

The Court, in the *Agustin* case, *supra,* refused to apply the technical construction which such a conclusion requires.

This Court cannot possibly admit of such a conclusion.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a *writ of certiorari* should be granted.

PREW SAVOY
Counsel for Petitioner.

March 13, 1956.

APPENDIX A

Act of June 3, 1916, c. 134, Sec. 1, 39 Stat. 166; 10 USCA 5, Sec. 2:

§ 2. Composition of Army of United States. The Army of the United States shall consist of the Regular Army, the National Guard while in the service of the United States, and the Organized Reserves, including the Officers' Reserve Corps and the Enlisted Reserve Corps. (June 4, 1920, c. 227, subchapter I, § 1, 41 Stat. 759.)

Act of January 26, 1918; 40 Stat. 432; 32 USC 84.

CHAP. 11.—An Act To authorize the calling into the service of the United States the militia and other locally created armed forces in the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided,* That the pay and allowances of officers and men of the Philippine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this Act when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts.

Approved, January 26, 1918.

Philippine Independence Act. March 24. 1934. 48 Stat. 456.

[CHAPTER 84.]

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONVENTION TO FRAME CONSTITUTION FOR PHILIPPINE ISLANDS

SECTION 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS

SEC. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance

appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

• • • • •

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

• • • • •

(10) Foreign affairs shall be under the direct supervision and control of the United States.

• • • • •

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of section 7.

• • • • •

IMMIGRATION AFTER INDEPENDENCE

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

Approved, March 24, 1934.

Constitution of the Philippine Commonwealth

The Constitution of the Philippine Commonwealth adopted February 8, 1935, provided, in article VII, section 11 (2):

> The President [of the Commonwealth] shall be Commander-in-Chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out armed forces to prevent or suppress violence, invasion, insurrection, or rebellion. • • •

The Ordinance appended to the Constitution provided:

> Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines.
>
> • • • • •
>
> (12) The Philippines recognizes the right of the United States • • • upon order of the President of the United States, *to call into the service of such armed forces* all military forces organized by the Government of the Commonwealth of the Philippines. [Italics supplied.]

Title X—Naturalization of Persons Serving in the Armed Forces of the United States During the Present War.

Sec. 640. Amendment of Nationality Act of 1940

The Act of October 14, 1940 (54 Stat. 1137; U.S.C., 1940 ed., sections 501-907 of Title 8), entitled "An Act to revise and codify the nationality laws of the United States into a comprehensive nationality code", is hereby amended by adding thereto a new title (sections 1001-1006 of Title 8) as follows:

"Title III

"Sec, 701. Notwithstanding the provisions of sections 303 and 326 of this Act (sections 703 and 726 of Title 8), any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any education test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued: *Provided, however,* That (1) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good

order and happiness of the United States, (2) the service of the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members or former members during the present war of the military or naval forces of the noncommissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than December 31, 1946. The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service.

• • • • •

"Sec. 706. No persons shall be naturalized under the provisions of this title (sections 1001-1006 of Title 8) unless such person has served in the military or naval forces of the United States prior to the date of enactment of this section (December 28, 1945)." Mar. 27, 1942, 3 p.m. E.W.T., c. 199, Title X, § 1001, 56 Stat. 182; Dec. 28, 1945, c. 590, § 1(c), 59 Stat. 658.

Section 1491 Judicial Code, 28 USCA 1491.

§ 1491. Claims against United States generally

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of an executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For liquidated or unliquidated damages in cases not sounding in tort. June 25, 1948, c. 646, 62 Stat. 940.

Section 2502 Judicial Code, 28 USCA 1491.

§ 2502. Aliens' privilege to sue.

Citizens or subjects of any foreign government which accords to citizens of the United States the right to prosecute claims against their government in its courts may sue the United States in the Court of Claims if the subject matter of the suit is otherwise within such court's jurisdiction. June 25, 1948, c. 646, 62 Stat. 976.

APPENDIX B

November 18, 1918.

By The President of the United States of America

A PROCLAMATION.

Whereas, by an Act of Congress entitled, "An Act to Authorize the Calling into the Service of the United States, the Militia and Other Locally Created Armed Forces in the Philippine Islands and for Other Purposes," approved by the President on the twenty-sixth of January, one thousand nine hundred and eighteen, it is provided that the militia and other regularly armed forces in the Philippine Islands may be called into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and

Whereas, by an Act of Congress entitled, "An Act for Making Further and More Effectual Provision for the National Defense and Other Purposes," approved the third day of June, one thousand nine hundred and sixteen, it is provided that, "The National Guard, when called as such into the service of the United States shall, from the time they are required by the terms of the call to respond thereto, be subject to the laws and regulations governing the Regular Army,"

Now, therefore, I, Woodrow Wilson, President of the United States of America, by authority of the powers conferred upon me by said Acts of Congress, do hereby call into the military service of the United States to serve therein for the period of one month, unless sooner discharged, as of and from the twentieth day of November, one thousand nine hundred and eighteen, the members of one Infantry Division of the Philippine Guard, as organized under the Tables of Organization of the United States Army, approved the third day of May, one thousand nine hundred and seventeen, as appears in Table twenty-five

thereof, saving and excepting one major general, one regiment of cavalry, one aero squadron, artillery and trains.

All persons hereby called, shall, on and from the twentieth day of November, one thousand nine hundred and eighteen, be subject to the laws and regulations governing the Regular Army.

The officers of said organizations who are called and whose offices are provided for in like organizations of the Regular Army, under Tables of Organization here before referred to, shall continue to exercise command in the grade in which they now hold commissions as officers of said Guard. On and from the twentieth day of November, one thousand nine hundred and eighteen, the non-commissioned officers of said organizations, the members of which are hereby called, shall continue as non-commissioned officers in said organizations in the Federal Service with the same relative rank as heretofore and all other enlisted men in said organizations shall continue in the grades and ratings held by them in the Guard of the Philippine Islands on the twentieth day of November, one thousand nine hundred and eighteen, in all cases where such grades and ratings correspond to the grades and ratings provided for in like organizations of the Regular Army as provided in the Tables of Organization herein referred to. These, however, shall be without prejudice to the authority of the duly authorized commanders in respect to promotions and changes in the enlisted personnel.

The several organizations hereby called into the Federal Service will bear the designation which they now hold in the Guard of the Philippine Islands.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this eighteenth day of November in the year of our Lord one thousand nine

hundred and eighteen, and in the Independence of the United States of America, the one hundred and forty-third.

WOODROW WILSON

(SEAL)

By the President:

ROBERT LANSING,
Secretary of State.

Military Order of July 26, 1941

ORGANIZED MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES CALLED INTO SERVICE OF THE ARMED FORCES OF THE UNITED STATES.

Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines: *Provided*, that all naval components thereof shall be placed under the command of the Commandant of the Sixteenth Naval District, United States Navy.

This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively,

indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War.

FRANKLIN D. ROOSEVELT

The White House,
July 26, 1941.

Executive Order 9001

Authorizing the War Department, the Navy Department, and the United States Maritime Commission to Perform the Functions and Exercise the Powers Described in Title II of an Act Approved December 18, 1941, Entitled "An Act to Expedite the Prosecution of the War Effort", and Prescribing Regulations for the Exercise of Such Functions and Powers

The successful prosecution of the war requires an all-out industrial mobilization of the United States in order that the materials necessary to win the war may be produced in the shortest possible time. To accomplish this objective it is necessary that the Departments of War and the Navy and the United States Maritime Commission cooperate to the fullest possible degree with the Office of Production Management in the endeavor to make available for the production of war material all the industrial resources of the Country. It is expected that in the exercise of the powers hereinafter granted, these Agencies and the Office of Production Management will work together to bring about the conversion of manufacturing industries to war production, including the surveying of the war potential of industries, plant by plant; the spreading of war orders; the conversion of facilities; the assurance of efficient and speedy production; the development and use of subcontracting to the fullest extent and the conservation of strategic materials.

TITLE I

1. By virtue of the authority in me vested by the Act of Congress, entitled "An Act to expedite the prosecution of the War effort", approved December 18, 1941, (hereinafter called "the Act") and as President of the United States and Commander-in-Chief of the Army and Navy of the United States, and deeming that such action will facilitate the prosecution of the war, I do hereby order that the War Department, the Navy Department, and the United States Maritime Commission be and they hereby respectively are authorized within the limits of the amounts appropriated therefor to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts. The authority herein conferred may be exercised by the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission respectively or in their discretion and by their direction respectively may also be exercised through any other officer or officers or civilian officials of the War or the Navy Departments or the United States Maritime Commission. The Secretary of War, the Secretary of the Navy, or the United States Maritime Commission may confer upon any officer or officers of their respective departments, or civilian officials thereof, the power to make further delegations of such powers within the War and the Navy Departments, and the United States Maritime Commission.

2. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft,

buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form.

3. The War Department, the Navy Department, and the United States Maritime Commission may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance, progress, and other payments upon such contracts of any percentum of the contract price, and may enter into agreements with contractors and/or obligors, modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds, whenever, in the judgment of the War Department, the Navy Department, or the United States Maritime Commission respectively the prosecution of the war is thereby facilitated. Amendments and modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract, or the amendments or modifications thereof.

4. Advertising, competitive bidding, and bid, payment, performance or other bonds or other forms of security, need not be required.

TITLE II

Pursuant to Title II of the Act and for the protection of the interests of the United States, I do hereby prescribe the following regulations for the exercise of the authority herein conferred upon the War Department, the Navy Department, and the United States Maritime Commission.

1. All contracts and all purchases made pursuant to the Act and this Executive Order shall be reported to the President of the United States. Such reports shall be made at least quarter-annually, provided, however, that purchases or contracts of less than $100,000 may be consolidated in such reports with other such purchases and need not be separately set forth. In case the War Department, the Navy Department, or the United States Maritime Commission shall deem any purchase or contract to be restricted, confidential, or secret in its nature by reason of its subject matter, or for other reasons affecting the public interest, such purchases or contracts shall not be included with those described in the report just mentioned, but shall be included in a separate report containing such restricted, confidential, or secret purchases or contracts. The Secretary of War, the Secretary of the Navy, and the United States Maritime Commission shall make public so much of such reports (other than those reports covering restricted, confidential, or secret contracts or purchases) as they shall respectively deem to be compatible with the public interest.

2. Notwithstanding anything in the Act or this Executive Order the War Department, the Navy Department, and the United States Maritime Commission shall not discriminate in any act performed thereunder against any person on the ground of race, creed, color or national origin, and all contracts shall be deemed to incorporate by reference a provision that the contractor and any subcontractors thereunder shall not so discriminate.

3. No claim against the United States arising under any purchase or contract made under the authority of the Act shall be assigned except in accordance with the Assignment of Claims Act, 1940 (Public No. 811, 76th Congress, approved October 9, 1940).

4. Advance payments shall be made hereunder only after careful scrutiny to determine that such payments

will promote the national interest and under such regulations to that end as the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission may prescribe.

5. Every contract entered into pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul, the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

6. Nothing herein shall be construed to authorize the cost-plus-a-percentage-of-cost system of contracting.

7. Nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits, or the payment of a fee in excess of such limitation as may be specifically set forth in the act appropriating the funds obligated by a contract. In the absence of such limitation, the fixed fee to be paid the Contractor as a result of any cost-plus-a-fixed-fee contract entered into under the authority of this Order shall not exceed seven per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secrtary of War, the Secretary of the Navy, or the United States Maritime Commission, as the case may be).

8. No contract or modification or amendment thereof shall be exempt from the provisions of the Walsh-Healey Act (49 Stat. 2036) because of being entered into without

advertising or competitive bidding, and the provisions of such act, the Davis-Bacon Act, as amended (49 Stat. 1011), the Copeland Act, as amended (48 Stat. 948), and the Eight Hour Law, as amended by the Act of September 9, 1940 (Public No. 781, 76th Congress) if otherwise applicable shall apply to contracts made and performed under the authority of this Order.

FRANKLIN D. ROOSEVELT

The White House
December 27, 1941.

Military Order

ORGANIZED MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES RELEASED FROM THE SERVICE OF THE ARMED FORCES OF THE UNITED STATES.

Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a) (12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander in Chief of the Army and Navy of the United States, I hereby release from the service of the armed forces of the United States all of the organized military forces of the Government of the Commonwealth of the Philippines called and ordered into the service of the armed forces of the United States pursuant to the Military Order of July 26, 1941.

The said Military Order of July 26, 1941, is hereby revoked.

This order shall take effect at 12:00 midnight June 30, 1946.

HARRY S. TRUMAN

The White House,
June 29, 1946.

APPENDIX C

HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST
MANILA, P. I.

General Orders
No. 46

18 December, 1941.

1. Pursuant to provisions of the Proclamation of the President of the United States, dated July 26, 1941, all personnel of the Philippine Army on active duty and all active units of the Philippine Army, less personnel and units already accepted for service with the United States Army Forces, are hereby called into the service of the armed forces of the United States in the Philippines, effective on the date of acceptance for the period of the existing emergency, and will be accepted for such service by officers in the service of the United States Army Forces in the Philippines.

2. Personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated are hereby called into the service of the armed forces of the United States in the Philippines, effective on the date of acceptance, and will be accepted for such service by officers in the service of the United States Army Force in the Philippines.

By command of Lieutenant General MacArthur:

R. K. Sutherland,
Brigadier General, GSC,
Chief of Staff.

Official:

Carl R. Seals,
Colonel, A. G. D.
Adjutant General.

A True Copy:

s/ William Barr, Jr.
t/ William Barr, Jr.,
Captain, AGD.

APPENDIX D

EMBASSY OF THE PHILIPPINES
WASHINGTON, D. C.

February 15, 1956

Mr. Prew Savoy
203 World Center Building
Washington 6, D. C.

My dear Mr. Savoy:

I have for acknowledgement your letter dated today regarding the claims of certain Filipino citizens against the United States of America on account of requisitions of guerrillas. I am very happy indeed to give you every possible and proper assistance in obtaining a full and final legal determination of the liability of the United States for debts created by reason of the necessary requisitions of the recognized Filipino Guerrillas in World War II. You are well aware that, in the absence of voluntary assumption of such liability by the United States, a final decision by your highest court is generally a condition precedent to diplomatic representations in such matters.

I will answer the three questions contained in your letter of February 15, 1956, *seriatim*. I believe that my statements fairly well represent the opinion of the people of the Phillipines on the subject.

(1) The first question I will answer by referring to my speech before the House of Representatives, as Resident Commissioner of the Philippines to the United States, on February 28, 1946, in which I said:

* * * * *

"But there is a legal bond between us that serves to complement the moral and emotional bond. Our troops fought, not only as Filipino soldiers but as soldiers of the Army of the United States, as American nationals fighting in defense of the

American flag on soil over which the United States had full sovereignty. When they fought, were wounded, were killed, they were Filipinos, yes, but they were also American nationals."

The attack by the Imperial Japanese Government was an attack—not on the Filipinos as such—but on the United States, against Americans on American soil.

When the Philippine Army was "called into the service of the Armed Forces of the United States" by Military Order of the President of the United States and received its orders from General MacArthur, every single soldier —while defending his native soil—felt that he was defending the American flag—the United States of America—as well as did any soldier from the mainland.

(2) Notwithstanding the fall of Corregidor and the official surrender of the Armies to Japan, many heroic bands of guerrillas took to the hills to harass the enemy, refusing to surrender. History has recorded their valiant efforts and achievements to the great benefit of the United States, necessary to the reoccupation of the Philippines by the armed forces of the United States. These guerrillas were given full recognition by President Osmena and General MacArthur on the latter's return to the Philippines. Their leaders had sworn allegiance to the United States and their men had, in turn, been so sworn by them. To survive the ordeals of this uphill fight, the guerrillas needed food and all manner of supplies, which they requisitioned. Receipts were given, and in every case of which I have knowledge the requisitioning officer unqualifiedly promised that the United States Army would pay upon its return to the Philippines.

The suppliers believed and, in my opinion, had every right to believe, that they were supplying guerrilla units of the American Army in defense of the United States and would be paid by the United States Army.

(3) Many thousands of such claims were filed before the Army Claims Service established for the payment of claims against the United States Army. Thousands of claims were allowed and paid. However, many thousands of claims were filed as the Army Claims Service was terminating its work and returning to the United States and were summarily dismissed. Thousands were filed too late and there are many who never filed because there was no one left with whom to file. Considering the number of islands comprising the Philippines, this is understandable.

We are now concerned with those who did file claims which for one reason or another were dismissed and who have sought a review by the Court of Claims, or who failed so to file because of the first decision in *Isidro Victorio* in 1950, which held that there was no liability on the part of the United States.

These people strongly feel, rightly or wrongly, that they have suffered an injustice at the hands of the United States Army. They feel that they supplied the United States Army, were promised payment, and that the United States Army left the Philippines without giving them a full opportunity to present their claims and without paying its obligations. Among them, their friends and families, which are indeed numerous, this cannot help but create an ill feeling toward the United States which we all hope can be avoided. There are bound to be enough problems between our two countries without having one so based.

They feel that the Court of Claims has done them a great wrong because their claims have never been heard on the merits. They cannot believe that these were not debts of the United States and they hope that your Supreme Court will decide otherwise.

Even if they now must turn to their Government for assistance and there, by reason of agreement between the

two Governments are eventually paid, they will feel that the United States Army and its Courts did not meet their responsibility. I feel that the elements which from time to time will seek to estrange Filipinos from the United States should not be augmented by disillusioning and embittering those who so loyally came to the assistance of the Guerrilla units of the United States Army. For this reason, I consider the matter of national importance and possibly of eventual international importance to the United States.

I fervently hope that—as a good and devoted friend of the United States—I can preserve the feeling of love and of comradeship of the Filipino people for the United States which existed before and during World War II, and the deep appreciation which they still have for the United States for helping them achieve their independence in accordance with its promises.

Sincerely yours,

CARLOS P. ROMULO

February 15, 1956

Honorable Carlos P. Romulo
Ambassador to the United States
Philippine Embassy
1617 Massachusetts Avenue, N. W.
Washington 6, D. C.

In re: Claims of Filipinos vs. United States of America for Requisitions by Guerrillas

Dear Mr. Ambassador:

As you well know, for the past several years I have been vigorously prosecuting claims of Filipinos versus the United States on account of requisitions of guerrillas,

before the United States Court of Claims. In 1952, that Court held, in the case of *Isidro Victorio* (reversing its earlier decision of 1950) that the United States was liable for the debt created by such a requisition. In July of 1955, in the case of *Eleuterio Logronio*, that Court specifically reversed its decision in the *Victorio* case.

On December 5, 1955, I argued the case of *Jose Soriano* before that Court. The case was promptly dismissed on the basis of the *Logronio* case, and I notified the Court of Claims that I would petition the United States Supreme Court for a *writ of certiorari*, which petition I intend to file within the month, so that the question may be reviewed. I do not go to the Supreme Court as a matter of right, but as a matter of grace, and the bases for such a review are very limited.

The two grounds for the granting of a petition for a *writ of certiorari* most persuasive to the Supreme Court are (1) that there exists a conflict in court decisions, and (2) that the question is of national importance.

I have found legal support for urging that there does exist a conflict on the question as to whether the Guerrillas, recognized by President Osmena and General Douglas MacArthur, called by the President of the United States, as Commander-in-Chief of the Army, into the service of the armed forces of the United States, were part of the armed forces of the United States, so that their requisitions created a debt of the United States for which it is liable. However, this may not be sufficient to convince the Supreme Court of the necessity for its judicial review of the question.

I can state to the Court that the question is of national importance—but that would be only *my* opinion. I can think of no one better qualified than you to give an opinion on the importance to the United States of having a judicial determination of this question, by reason of its international importance, which opinion I can use in support of

my allegation to that effect. Therefore, I am seeking your help.

I am sure you know (1) what the Filipinos thought, when they were "called into the service of the armed forces of the United States"; (2) what the Filipino people thought when the Guerrilla units requisitioned supplies, were given receipts and were told that the United States Army would pay at the end of the War; and (3) what the Filipinos who filed claims, which were neither heard nor paid, will think, how they will feel toward the United States if there is no legal determination other than by the Court of Claims as its decision now stands.

I believe, Mr. Ambassador, that an expression of opinion from you on this subject can be persuasive and is necessary to a determination of the question.

With highest personal regards, I am—

Sincerely yours,

PREW SAVOY

APPENDIX E

GENERAL HEADQUARTERS
FAR EAST COMMAND

APO 500
3 January 1947

AG 370.64 (3 Jan 47)JA

Subject: Claims Arising Out of Guerrilla Activities.

To: Commanding General, Philippines-Ryukyus Command
APO 707

1. The instructions for the payment of claims arising out of guerrilla activities contained in the basic letter, 23 October 1946, AG 370.74 (23 October 46)JA, subject: "Claims Arising Out of Guerrilla Activities", this headquarters to the Commanding General, AFWESPAC, are superseded by the following:

2. By authority of the 1st War Power Act of 1941 and Executive Order 9001, and under the provisions of circular 53, W. D. 1946, the payment of certain claims arising out of the activities of recognized guerrilla units in the Philippines is authorized. Payments will be limited to claims for the value of:

a. equipment.
b. supplies
c. services of civilians
d. use and occupation of land not in connection with actual combat operations

3. Such claims will be paid:

a. Where the claim arose between the original date of recognition of the guerrilla unit and the date of the termination of the recognition, or the deactivation thereof;

b. Where definite proof establishes that the obligation was not intended as a patriotic donation to the

common cause against the enemy, but was furnished with the agreement that payment would be made therefor;

c. Where the obligation incurred was necessary for the conduct of operations against the enemy.

4. Such claims will be paid from the appropriation, "expenses, Army of the Philippines."

5. The dates of the beginning of the recognition of guerrilla forces and units, and the dates of the termination of the recognition, or the deactivation of the guerrilla forces and units, will be established by the Commanding General PHILRYCOM.

By Command of General MacArthur:

s/ J. M. Ebbit
Captain, AGD
Asst Adj Gen

Order of the Court on Defendant's Motion for Judgment on the Pleadings

IN THE UNITED STATES COURT OF CLAIMS

No. 50127

JOSÉ SORIANO

v.

THE UNITED STATES

ORDER

This case comes before the court on defendant's motion for judgment on the pleadings urging dismissal of plaintiff's petition on the authority of the decision in *Logronio v. The United States*, No. 354-54, decided July 12, 1955, and, upon consideration thereof,

It is ORDERED this sixteenth day of December, 1955, that defendant's motion for judgment on the pleadings be and the same hereby is granted and plaintiff's petition is dismissed.

By the Court,

/s/ BENJAMIN H. LITTLETON
Benjamin H. Littleton
Acting Chief Judge

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FILED
AUG 27 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSÉ SORIANO, *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

On Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSÉ SORIANO, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

On Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Claims is based upon its opinion in *Elenterio Logronio* v. *The United States*, reported in 133 F. Supp. 395, which reversed its Opinion in *Victorio* v. *United States*, 106 F. Supp. 182, which in turn superseded its Opinion in *Victorio* v. *United States*, 91 F. Supp. 748.

The judgment of the United States Court of Claims was entered December 16, 1955 (R. 15). The Petition for Writ of Certiorari was filed on March 13, 1956, and granted April 30, 1956 (R. 16). The jurisdiction of this Court rests on 28 U.S.C. § 1255 (1) (App. F, p. 1 b).

STATUTES—PRESIDENTIAL MILITARY ORDERS AND PROCLAMATIONS—MILITARY ORDERS

The Statutes, the Presidential Military Orders and Proclamations, and the Military Orders involved, are set out in Appendices A to E of the Petition for Writ of Certiorari, pp. 1a to 25a, and in Appendices F to CC, *infra,* pp. 1 b to 83 b.

QUESTION PRESENTED

The basic question, as presented in the Petition for a Writ of Certiorari, is:

Do the facts, as disclosed by the Record, under the Constitution of the United States and the laws and decisions applicable, establish:

That the personnel of the Philippine Army, called and ordered into the service of the armed forces of the United States by Military Order of the President of the United States, as Commander-in-Chief of the Army and Navy of the United States, and subsequently by the Commanding Officer of the Army Forces of the United States in the Far East (Philippines), who answered the call, did not surrender, but fought as organized guerrillas, who were subsequently recognized by the President of the Philippines as authorized elements of the Philippine Army and by the Commander-in-Chief of the Army Forces of the United States, Southwest Pacific Area, as authorized elements

of the United States Armed Forces in the Far East, were part of the armed forces of the United States, so that the requisitions for their sustenance for military operations, for which the requisitioning officers agreed that the United States Army would pay, created a debt of the United States for which the United States is liable?

For purposes of the present brief, this basic question is subdivided, as follows:

1. Whether the Military Order of Franklin D. Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, calling and ordering the Philippine Army into the service of the armed forces of the United States, and the implementing Military Orders of the Commander-in-Chief of the United States Army Forces in the Far East, had the effect of inducting the personnel of such Army into the armed forces of the United States.

2. Whether the requisitions for military operations of the organized guerrillas, the remnants of such Army, who refused to surrender after the fall of Corregidor and continued to fight Japan, which guerrillas swore allegiance to the United States before United States Army officers, and who were later recognized as authorized elements of the Philippine Army by President Osmena, and as authorized elements of the United States Armed Forces in the Far East by General MacArthur, Supreme Commander, Southwest Pacific Area, for which requisitions the requisitioning officers agreed the United States Army would pay, created a debt of the United States for which the United States is liable.

STATEMENT

The facts, fully set forth in the Petition for Writ of Certiorari, are, in substance, as follows (R. 1-10, except where noted):

(1) Petitioner is a citizen of the Republic of the Philippines, to which he owes allegiance, and was at the time the claim *accrued*. At the time this claim *arose*, he owed allegiance to the United States of America (R. 1).

(2) Pursuant to authority of the Philippine Independence Act of March 24, 1934 (48 Stat. 456) and Sec. 1(12) of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by Military Order of the Commander-in-Chief of the Army and Navy of the United States, President Franklin D. Roosevelt, 26 July 1941, and was integrated therein by general orders of General Douglas MacArthur, Commanding General of the United States Army Forces in the Far East, known in short as "USAFFE". (R. 2)

(3) Congress declared a state of war to exist between Japan and the United States on December 8, 1941. (App. J, p. 7 b)

(4) After the fall of Bataan and Corregidor and the surrender of the United States Armed Forces (App. S, p. 34 b) in 1942, personnel of USAFFE from the United States mainland and from the Philippines refused to surrender to the military forces of the Imperial Japanese Government, which Government was then the enemy of the United States of America (hereinafter sometimes referred to as the Enemy). Instead, they fled to the hills, where they banded and

organized themselves into guerrilla units and continued to wage military operations against the Enemy, in accordance with the express and implied authority of General MacArthur, Commander-in-Chief, USAFFE, and later Supreme Commander, Southwest Pacific Area (USA-SPA), having sworn allegiance to the United States of America, until the liberation of the Philippines from the military control of the Enemy by the armed forces of the United States. (R. 2)

(5) Among the guerrilla units thus organized was the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District, in the Island of Negros, Philippines, which unit continuously conducted military operations against the Enemy in accordance with the express and implied authority of General MacArthur, its leader having sworn allegiance to the United States of America and the men having in turn been so sworn. (R. 2)

(6) In order successfully to prosecute military operations against the Enemy and in accordance with the Rules of Land Warfare published by the United States War Department and or in accordance with the express and implied authority of General MacArthur and his staff, the aforesaid guerrilla unit, through its authorized officers, requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods, and merchandise from various persons. (R. 2-3)

(7) Petitioner, at various times from 1942 to 1945, delivered to the aforesaid guerrilla unit, through its authorized officers, various quantities and descriptions of foodstuff and food supplies, equipment, goods, and merchandise, needed by this armed force, the then

reasonable market value of which equaled or exceeded the total amount of Two Hundred Thirty-nine Thousand Five Hundred Thirty-one Pesos and Fifty Centavos (₱239,531.50), currency of the Republic of the Philippines, or One Hundred Nineteen Thousand Seven Hundred Sixty-five Dollars and Seventy-five Cents ($119,765.75), United States currency. (R. 3)

(8) At the time the various foodstuffs and food supplies, equipment, goods, and merchandise were commandeered, corresponding receipts were issued to petitioner, and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army. (R. 3-4)

(9) Upon the return of President Osmena and General MacArthur to the Philippines, the members of the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District, were recognized by President Osmena as an authorized element of the Philippine Army and by General MacArthur as an authorized element of the United States Armed Forces in the Far East. (App. X, p. 59 b, and App. Y, p. 61 b)

(10) Japan surrendered the Philippine Islands September 2, 1945. (App. J, p. 7 b)

(11) Petitioner has not been paid for the above-mentioned foodstuffs and food supplies, equipment, goods, and merchandise, and is justly entitled to the sum of One Hundred Nineteen Thousand Seven Hundred Sixty-five Dollars and Seventy-five Cents ($119,765.75). (R. 4)

(12) Petitioner filed a claim for payment of the commandeered property with the Claims Service of

the United States Army on March 30, 1948, which was within the period prescribed for filing claims against the United States Army. This claim was denied on June 21, 1948. (R. 4)

(13) Petitioner filed a petition in the United States Court of Claims on April 26, 1951, which was within six years of the date on which Japan surrendered and within six years of the date on which the claim was denied by the Army Claims Service. (R. 1)

(14) The United States Court of Claims, upon Defendant's Motion for Judgment on the Pleadings, on the basis of its prior decision in *Eleuterio Logronio* v. *United States*, *supra*, dismissed the petition on December 16, 1955. (R. 15)

(15) The claim in the *Logronio* case was barred in whole by the statute of limitations and, in addition, was barred in part by the finality provisions of the Missing Persons Act, which the Government had argued—"But instead of deciding this simple case on those simple grounds, the case is made the vehicle for overruling our former decision in the case of *Isidro Victorio* v. *United States*, 122 C. Cls. 708 (106 F. Supp. 182). That decision was arrived at unanimously, after normal deliberation. We have not been asked to overrule it. I think that decision was right and I cannot concur in the part of the instant opinion which overrules it." (Dissent of Judge Madden, concurring in the result.) (Brief for United States in Opposition, p. 39.)

(16) This Court granted certiorari. (R. 16).

SUMMARY OF ARGUMENT

I.

The recognized guerrillas were part of the armed forces of the United States

Under the Philippine Independence Act of 1934 and the Constitution of the Commonwealth of the Philippines, the President of the United States, as Commander-in-Chief of the Army and Navy of the United States, had the sovereign right and power to maintain armed forces of the United States in the Philippines and to induct all organized armed forces in the Philippines into such armed forces of the United States, i.e., to call and order such Philippine forces into the armed forces of the United States.

Under date of July 26, 1941, President Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, issued a Military Order calling and ordering all Philippine organized armed forces into the service of the armed forces of the United States, to be under the command of a general officer of the United States Army.

On the same date the War Department created a Far East command, called United States Army Forces in the Far East, known as USAFFE, and named General MacArthur its commander.

In October, 1941, the Philippine Constabulary, and in December, 1941, the Philippine Army, were inducted into the Armed Forces of the United States in the Far East by order of its Commander-in-Chief, General MacArthur.

The official History of the Department of the Army, *The War in the Pacific,* Vols. III, IV, and V, and the

Report of the High Commissioner of the Philippine Islands, for the period July 1, 1941, to June 30, 1942, clearly show that the Philippine Army was part of the armed forces of the United States from 1941 until the surrender by General Wainwright in 1942.

After the fall of Corregidor, guerrilla bands were organized under the express orders of General MacArthur, then Supreme Commander of the Pacific Area, to carry on, and they continued to carry on, military operations against Japan.

Upon his return in 1944, President Osmena recognized the organized guerrillas as authorized elements of the Philippine Army.

Thereupon, the guerrillas so recognized were recognized by order of General MacArthur as authorized elements of USAFFE.

On June 30, 1946, the Commander-in-Chief of the Army and Navy of the United States released from the service of the armed forces of the United States the organized Philippine armed forces which had been ordered into the service of the armed forces of the United States in 1941.

Thus, the recognized guerrillas were part of the armed forces of the United States, from 1942 to 1945 or 1946, just as the Philippine Army had been in 1941 and 1942.

The decisions in the Filipino naturalization cases following World War II recognize the fact that the recognized guerrillas were part of the armed forces of the United States.

The statutes support the fact that being in the service of the armed forces of the United States is the same as being in the armed forces of the United States.

The reasoning of the Court below to the contrary is without foundation.

II.

The recognized guerrillas had the right and power to requisition their military needs and thereby to create a debt of the United States therefor

The Hague Conventions, the Rules of Land Warfare, and authorities on International Law, unqualifiedly permit the making of requisitions to carry on military operations — with the corresponding obligation to make just compensation therefor. The Military Requisition Act of 1941 was an approval of the existing power and right of requisition.

The organized, recognized guerrillas had this power and right notwithstanding the Autonomy Act of 1916.

Decisions of the Appeal Board, Office of Contract Settlement, apply the Contract Settlement Act of 1944 to the Philippines, though they are not mentioned in the Act.

Applicable decisions of the Courts support the right of petitioner to just compensation on account of the requisitions of the organized, recognized guerrillas.

ARGUMENT

I. THE RECOGNIZED GUERRILLAS WERE PART OF THE ARMED FORCES OF THE UNITED STATES.

The claim is based upon contracts between petitioner and the United States armed forces in the Philippines, arising out of requisitions necessary for the maintenance of those armed forces in military operations against Japan in 1942 to 1945, entered into under emergency conditions.

Admitting *arguendo* that the Philippine Army, which was called into the service of the armed forces of the United States by the Commander-in-Chief of the Army and Navy of the United States, President Roosevelt, and by the Commander-in-Chief of the United States Army Forces in the Far East, General Douglas MacArthur, is not within the definition of *Army* of the United States, as found in 10 U.S.C. 2 (App. A, Pet. for Writ, p. 1a), it was nonetheless part of the *armed forces* of the United States in the Far East in World War II.

The Navy, the Marine Corps, the WAVES, and the WACs, were not part of the Army of the United States, as defined in the Code in 1916, but they were definitely a part of the *armed forces* of the United States in the Far East in World War II. So was the Philippine Army.

On March 24, 1934, the Philippine Independence Act was approved (48 Stat. 456—App. to Pet. for Writ, pp. 2a-3a). One of its "*Mandatory* Provisions" (Sec. 2(a)(12)) was:

> "*The Philippine Islands recognizes the right of the United States . . . to maintain* military and other reservations and *armed forces in the Philippines,* and, *upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.*" (Italics supplied.)

It also required that all Filipinos would owe allegiance to the United States and thus they could be drafted or inducted into the Armed Forces of the United States.

The Constitution of the Philippine Commonwealth, adopted February 8, 1935, in furtherance of the Independence Act, provided that its President would be Commander-in-Chief of all armed forces of the Philippines, replacing our Governor General; but, in Section 1 of the Ordinance appended thereto, it was provided that—

> ". . . pending the final and complete withdrawal of the sovereignty of the United States over the Philippines [July 4, 1946] . . ."
>
> * * * * *
>
> "(12) The Philippines recognizes the right of the United States . . . *to maintain* . . . *armed forces* in the Philippines, and, upon order of the President, *to call into the service of such armed forces* all military forces organized by the Government of the Commonwealth of the Philippines." (Italics supplied.) (App. Q, p. 20 b.)

Thus, prior to and on the outbreak of the war between the United States and Japan, the United States had the *sovereign right* to maintain an armed force in the Philippines and to have the President of the United States call and order the organized Philippine Army into that armed force.

In 1935, there existed a Philippine militia, under an Act of March 17, 1917—a small Philippine Army. On December 21, 1935, the First National Assembly passed Commonwealth Act No. 1, in accordance with a plan devised by General MacArthur (App. P, p. 15 b, and App. S, p. 25 b), which, among other things, provided for the national defense of the Philippines. The purpose was to build a Philippine Army, which was to be called the "Philippine Department." (App. P, p. 16 b.)

There being no one qualified in the Philippines to train the newly created Philippine Department,

General MacArthur resigned from the United States Army and was named Military Advisor to the Commonwealth Government to build the Philippine Department, in accordance with his plan, Commonwealth Act No. 1. He acted in this capacity until 1941. (App. S, p. 26 b.)

In June 1941 General MacArthur wrote the War Department suggesting that "*since the Philippine Army was to be absorbed by the U. S. Army* in the very near future," he intended to close the office of Military Advisor and suggested a new military command embracing all activities in the Far East, he to be named commander. (Italics supplied.) (App. S, p. 26 b, and App. T, p. 53 b.)

On July 17, 1941, General Gerow recommended:

"1. That the President, by executive order, *call into the service of the United States* for the period of the emergency all organized military forces of the Commonwealth. [Italics supplied.]

"2. That General MacArthur be called to active duty in the grade of Major General and assigned as commander of *Army* Forces in the Far East. [Italics supplied.]

"3. That $10,000,000 of the President's Emergency Fund be allotted to cover the costs of mobilization and training of the Philippine Army for a period of three months.

"4. That the training program of the Philippine Army for an additional six to nine months be financed from the sugar excise fund, or from other funds appropriated for this purpose.

"5. That 425 Reserve officers be sent to the Philippines to assist in the mobilization and training of the Philippine Army." (App. S, p. 27 b.)

On July 25, 1941, Secretary of War Stimson recommended this program to the President. (App. S, p. 28 b.)

On July 26, 1941, President Roosevelt issued the Military Order mentioned *supra,* p. 4.

While no commanding officer was named in the Order, it was clear that the forces in the Philippines were to be under a general officer of the United States Army. "*The actual induction of the Philippine Army Units* was to be accomplished by orders issued by that general officer." (Italics supplied.) (App. S, p. 28 b.)

The same day, a new command was created called United States Army Forces in the Far East (USAFFE), consisting of the Philippine Department, those military forces of the Commonwealth ordered into active service for the period of the emergency, and such other forces as might be assigned. (App. T, p. 53 b.) At the same time, MacArthur was recalled to active duty, effective on 26 July, with the rank of major general, designated as the general officer referred to in the military order, and put in command of U. S. Army Forces in the Far East. (App. T, p. 53 b.)

On October 6, 1941, General MacArthur ordered a unit of the Philippine Constabulary into the service of the armed forces of the United States. (App. U, p. 55 b.)

On December 18, 1941, General Orders No. 46 was issued, reading in major part as follows:

> "1. Pursuant to provisions of the Proclamation of the President of the United States, dated July 26, 1941, *all personnel of the Philippine Army* on active duty and all active units of the

Philippine Army, *less personnel and units already accepted for service with the United States Army Forces,* are hereby called into the service of the *armed forces* of the United States in the Philippines, effective on the date of acceptance for the period of the existing emergency, and will be accepted for such service by officers in the service of the United States *Army Forces* in the Philippines. [Italics supplied.]

"2. Personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated are hereby called into the service of the *armed forces* of the United States in the Philippines, effective on the date of acceptance, and will be accepted for such service by officers in the service of the *United States Army Force in the Philippines.*" (Italics supplied.) (App. C to Petition for Writ, p. 17a.)

In the report of the United States High Commissioner to the Philippines, for the period July 1, 1941, to June 30, 1942 (App. P, pp. 15 b to 20 b), he says:

* * * * *

"On July 26, 1941, the President of the United States ordered the *incorporation of the Philippine armed forces into the United States Army* and on the same day appointed Gen. Douglas MacArthur, formerly Chief of Staff of the United States Army, then military adviser to the Commonwealth Government, to be commander in chief of a new organization to be known as the United States Army Forces in the Far East . . . *At the same time he pushed forward the work of inducting Philippine Army troops into the service of the United States Army,* and giving them intensive training under regular United States Army officers. *By the time war broke out the bulk of Philippine reservists had been so inducted;* and

many of these, together with the Philippine Scout troops, played a heroic part in the later defense of Bataan and Corregidor. [Italics supplied.] [App. P, p. 16 b.]

* * * * *

"The calling into the service of the armed forces of the Commonwealth government military forces necessitated the assumption by the United States of expenses previously borne by the Commonwealth. At the same time, the expenses of our military establishment in the Philippines were being augmented by the increased number of American troops in the islands. To finance the calling of Philippine troops into the service of the United States armed forces and to maintain them until regular appropriations had been made, the President of the United States advanced $15,000,000 from his emergency fund. In December 1941 Congress appropriated $269,000,000 'for all expenses necessary for the mobilization, operation, and maintenance of the Army of the Philippines, including expenses connected with calling *into the service of the armed forces of the United States* the organized military forces of the Government of the Commonwealth of the Philippines . . .' . . of which not to exceed $15,000,000 may be restored to the Emergency Fund for the President . . . in reimbursement of a like amount advanced therefrom . . .' " (App. P, p. 19 b.)

The expenses were to be borne by the United States at first, under the MacArthur training plan, by the proceeds of the sugar excise tax and the devaluation fund. In 1941, these funds were obviously insufficient in amount, and a Presidential advance and Congressional appropriations were required. (App. P, p. 19 b, and App. T, p. 53 b.)

Thus, contemporaneous documents — the clear language of the Philippine Independence Act, the Con-

stitution of the Commonwealth of the Philippines, the Orders of President Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, and of General MacArthur as Commander-in-Chief of the United States Army Forces in the Far East, the Report of the High Commissioner to the Philippines in 1943, all corroborated by the History published under the auspices of the Department of the Army in 1953-1954—lead to the irresistible and undeniable conclusion that the Philippine Army was inducted or ordered into the United States Armed Forces in the Far East, and became a part of the Army Forces of the United States. This evidence confirms the assertions of General Carlos P. Romulo to this effect, in his letter of February 15, 1956 (App. D to Pet. for Writ, pp. 18a to 21a).

The Filipinos thereafter fought side by side with other American soldiers from the United States mainland, under United States Army officers, as well as their own—at Bataan, at Corregidor, on the Island of Negros, involved in this case, and on the many other islands of the 7,000 islands which comprise the Philippines.

On April 9, 1942, General Edward P. King, Jr., surrendered 78,000 men at Bataan. (App. S, p. 33 b.)

On May 6, 1942, General Wainwright, who had been made Commander-in-Chief, United States Forces in the Philippines (USFIP), by President Roosevelt, but not by General MacArthur, surrendered the remnants of our army, 11,000 men, at Corregidor. Japanese General Homma refused to accept such surrender unless Wainwright surrendered all of the United States armed forces in the Philippines. (App. S, p. 34 b, and App. V, p. 55 b.)

Wainwright feared the annihilation of the 11,000 defenseless men on Corregidor if he failed to surrender all troops. On the other hand—"MacArthur, he knew, expected [General William F.] Sharp's force to continue the fight as guerrillas and to keep alive resistance on Mindanao. He [Wainwright] had done his best to achieve this aim, and Sharp was now free to conduct *guerrilla* operations." (Italics supplied.) (App. S, p. 34 b-35 b.)

Faced with the dilemma, General Wainwright was forced to order the surrender of officers on Mindanao and other islands, as well as Corregidor (App. S, p. 35 b, App. V, p. 55 b), although his command had a month earlier been restricted by General MacArthur to Corregidor (General Homma refused to believe it). On May 7, 1942, Wainwright ordered Sharp to surrender. Sharp addressed a cable to General MacArthur, who replied on May 7:

> "Orders emanating from Gen. Wainwright have no validity. If possible separate your force into small elements and initiate *guerrilla* operations." (Italics supplied.) (App. S, p. 38 b.)

> "Only a small portion of the troops surrendered. The rest remained in hiding, to become later the nucleus of one of the *guerrilla* forces in Northern Luzon." (Italics supplied.) (App. S, p. 37 b.)

The bulk of Colonel Nakar's forces remained in the mountains, and those who evaded the Japanese were organized into the 14th Infantry (PA), which continued in existence as a *guerrilla* force. (App. S, p. 37 b.)

On Leyte, of his 2,500 officers and men, Colonel Cornell surrendered 11 American army officers, 40

Filipino army officers, and 20 Filipino enlisted men. The rest had disappeared to carry on *guerrilla* operations. (App. S, p. 39 b.)

On Negros, the island involved in the subject case, the troops refused to surrender and took to the hills. Colonel Hilsman, upon the urgency of General Wainwright, finally persuaded 95% of one battalion and 30% of two others to come down out of the hills. Two battalions never surrendered at all. (App. S, p. 40 b.)

Thus were formed some of the various *guerrilla* units—known as *organized guerrillas*, under the *direct orders* of General MacArthur, then (Commander-in-Chief) Supreme Commander, Southwest Pacific Area, and the various American army officers on his staff and under his command—all part of USAFFE. There were many others similarly organized. (App. S, p. 39 b, and App. Y, pp. 61 b-68 b.)

On June 9, 1942, General Wainwright surrendered all United States armed forces in the Philippines including the Filipinos — that is, except the organized guerrillas. (App. S, p. 40 b.)

The guerrillas continued the fight, harassed the Japs, communicated continuously with General MacArthur, and prepared for the return of their President and of General MacArthur.

In October 1944, President Osmena, who was President of the Commonwealth of the Philippines and Commander-in-Chief of its Army, by virtue of an Act of the Congress of the United States—1943—(App. K, p. 8 b), notwithstanding the Philippine Constitution (App. Q, p. 20 b), returned and issued Order No. 21, in which he recognized retroactively certain

named organized guerrilla units as authorized elements of the Philippine Army, they having been inducted into the United States armed forces as such. (App. X, p. 59 b.)

General Krueger, Commander of the Sixth Army, and General MacArthur, Supreme Commander (or Commander-in-Chief), Southwest Pacific Area, followed this Order of President Osmena by Miscellaneous Orders, in which they also retroactively recognized by name, as authorized elements of USAFFE, the guerrilla units recognized as authorized elements of the Philippine Army. (App. Y, p. 61 b.)

On June 30, 1946, President Truman, as Commander-in-Chief of the Army and Navy of the United States, released from the service of the armed forces of the United States all of the organized forces of the Government of the Commonwealth of the Philippines which had been called and ordered into the service of the armed forces of the United States pursuant to the Military Order of July 26, 1941. (App. B to Petition for Writ, p. 16a.)

Thus, we also have, by an indisputable record, the established facts that:

(1) After the fall of Corregidor, guerrilla bands were organized under the express and implied authority of General MacArthur and his staff to continue the military operations;

(2) Upon the return to the Philippines of President Osmena, Commander-in-Chief of the Philippine Army, the organized guerrilla units were recognized retroactively by him as authorized elements of the Philippine Army from the various dates of their organization in 1942;

(3) Upon the return to the Philippines of General MacArthur, the organized guerrilla units so recognized by President Osmena were recognized retroactively by General Krueger and General MacArthur as authorized elements of the United States Armed Forces in the Far East, from the various dates of their organization in 1942; and

(4) The period of induction of the Philippine Army was terminated June 30, 1946, by President Truman, as Commander-in-Chief of the Army and Navy of the United States.

Thus, the organized, recognized guerrillas were part of the armed forces of the United States from 1942 to 1946.

That the organized guerrillas were part of the United States armed forces was recognized by the District Court for the Northern District of California (S.D.) in the *Petition of Agustin,* 62, F. Supp. 832.

In that case, Agustin, a Filipino guerrilla, sought to become a citizen of the United States by a short-cut method provided for a person "*who has served . . . honorably in the military . . . forces of the United States* during the present war and who, having been lawfully admitted to the United States, including its Territories or Possessions, shall have been at the time of his enlistment or induction a resident thereof . . ." (Italics supplied.) (50 App. U.S.C.A., Sec. 640.)

The Court noted the various emergency decrees and specifically the fact that the Yay Regiment of guerrillas, in 1945, had been recognized as an authorized element of the United States Armed Forces in the Far East, and held that Agustin, though he had

neither enlisted nor been inducted, had been in our Army and was entitled to the benefits of the statute.

The Court said, at page 835:

"I stated in the Petition of Delgado, D.C., 57 F. Supp. 460, at page 462—

'It was clearly the intent of Congress in adopting Sec. 701 to follow the historic course of granting the boon of citizenship to loyal aliens engaging to help defend this country. The House Committee reporting H. R. 1710 (which became Sec. 701) said: "It is a matter of historic record that the Government of the United States, as an encouragement to loyal aliens engaged in the defense of this country through service in the armed forces, has in past years, relieved them from some of the burdensome requirements of the general naturalization laws." House Misc. Rep. 10661, page 3. And again in the same report, it is stated: "This proposed legislation proceeds upon the principle that non-citizens who are ready and willing to sacrifice their lives in the maintenance of this democratic government are deserving of the high gift of United States citizenship when vouched for by responsible witnesses as loyal and of good character and shown by government records as serving honorably."'

"Certainly petitioner here was within the category of those 'who are ready and willing to sacrifice their lives in the maintenance of this democratic government . . .' The broad and liberal concept, upon which Congress based the bestowal of citizenship upon aliens defending this country, must therefore, in my opinion, be the background against which the court should appraise the nature of petitioner's military activities in determining the question as to whether he served in the military forces of the United

States. Extreme technical distinctions should not be invoked to defeat the application for citizenship of a worthy and distinguished Filipino as against a fair and liberal interpretation of Congressional intent."

Had the Court based its decision on the fact that later Agustin had been a colonel in the United States Army, there would have been no occasion to discuss the guerrilla operations.

The Circuit Court of Appeals for the First Circuit, in *United States* v. *Peter You Lo Chen*, 170 F. (2d) 307, in refusing to permit the applicant therein the short-cut route to citizenship followed in the *Agustin* case, had occasion to consider the decisions in the *Appeal of Delgado*, 57 F. Supp. 460, and the *Appeal of Agustin, supra*, which had been cited as authority, and said, at page 310:

> "In the Agustin case, supra, the applicant for naturalization was a Filipino who had organized a guerrilla unit during the war against Japan. The oath of allegiance had been administered to him in 1942 by an American army officer who had taken refuge in his camp. Later his guerrilla unit was formally recognized by the Commander in Chief, Southwest Pacific area, as an authorized element of the United States Army Forces in the Far East, in an order issued from the headquarters of the Sixth Army on May 16, 1945. The guerrilla unit, which became known as the 'Yay Regiment', under command of Agustin with the rank of Colonel of Infantry, *was attached to* the 43d Division, U. S. Army, and Agustin was paid the salary and allowances of a colonel of the U. S. Army. [Italics supplied.] He rendered valiant combatant service, so much so that he was awarded the Distinguished Service Cross. The

court properly held that the informality of the circumstances of Agustin's enlistment did not obscure the actual fact of his honorable and distinguished service as commanding officer of a recognized element of the United States Army, and that petitioner was entitled to be admitted to citizenship. His petition was not opposed by the Naturalization Service."

It is to be noted that the special statute applies only to those who *served in the armed forces of the United States.* Agustin—a guerrilla—did. Chen, who had offered to serve, did not serve. Both Courts relied upon the guerrilla activities of the Yay regiment and its recognition as part of USAFFE.

If the guerrillas *served in* the United States Army for fighting purposes, they *served in it* for eating purposes, too; and if they *served in* the United States Army for naturalization purposes, they *served in* it for purposes of the payment by the United States of the debts contracted for the food and equipment required in their military operations.

The Government, in the many cases briefed and argued in the Court of Claims, has stressed the use of the word "service", in the Military Order of President Roosevelt, *supra,* concluding that calling the Philippine Army *into the service* of the United States armed forces is different from being made a part of the Army of the United States. It is urged that this conclusion is incorrect and that the Court could have readily, and should have, reached the contrary conclusion in the *Logronio* case, upon a full examination of the word, "service". The fact is that miscellaneous statutes speak of persons who *served in the armed forces,* meaning, primarily, persons who enlisted or

were inducted into the armed forces of the United States, but not necessarily limited thereto, as the *Agustin* case shows. But how does such induction in fact differ from being *ordered into the service* of the *armed forces* of the United States?

The word, "service", according to Webster's New International Dictionary (Second Edition) — Unabridged—1946, among other uses, means:

* * * * *

"Performance of official duties for a sovereign or state . . ."

* * * * *

"(a) Military or naval duty; also, its performance, esp. in war; as, *service* in the field; active *service*. (b) A particular military or naval operation, as a campaign, expedition, or engagement. (c) The military, naval, or other combatant organizations of a country; as, to have been in the *service;* in British use, esp. the naval organization.".

* * * * *

"Mil. A branch of any army whose chief duty is to supply the needs of a strictly combatant branch . . . In the United States Army, the services are: Adjutant General's Department, Inspector General's Department, Judge Advocate General's Department, Quartermaster Corps, Finance Department, Medical Department, Ordnance Department, Chemical Warfare Service, and Chaplains."

* * * * *

The word "serve" is:

* * * * *

"To do military, naval, or similar service; as, to *serve* in the wars or at sea; to *serve* in the army, navy or militia."

* * * * *

"To render military or naval service to; *to fight for.*" (Italics supplied.)

* * * * *

It is very clear that, when the organized units of the Philippine Army were ordered and called *into the service of the armed forces of the United States,* they were ordered and called to duty—to serve as part of our armed forces, to fight for the United States. The organized guerrillas were later incorporated into USAFFE, as of the date of their initial organization, and were as much a part of the armed forces of the United States as was any volunteer or draftee from the mainland.

The statutes amply support this fact.

The Selective Training and Service Act, 54 Stat. 885, Tit. 50, App. U.S.C.A. Sec. 303, provided that ". . . every other male citizen of the United States, who is between the ages of eighteen and forty-five at the time fixed for his registration, shall be liable for training and *service in the land or naval forces of the United States.*" (Italics supplied.)

The Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, Tit. 50, App. 510, provided for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service (*in the military service*) during the period over which the Act remains in force. Under Sec. 512, the Act applies to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, "*including the Philippine Islands while under the sovereignty of the United States* . . ." (Italics supplied.)

The Second War Powers Act, 1942, 56 Stat. 176, 50 App. USCA Sec. 640, provides a speedy means of becoming a naturalized American for a person "who *has served* or *hereafter serves* honorably in the *military or naval forces* of the United States during the present war . . . " (*Supra*, p. 21.)

The reasons why the President of the United States and General MacArthur, prior to "Pearl Harbor", called all active units of the Philippine Army *into the service of the armed forces of the United States*, instead of inducting each individual into it, are probably many. One reason is clear.

The War Department for years had had the supervision of the Philippines. Any requests for their benefit, or any demands of them, were under that Department, whether the action called for was one for the executive or the legislative branch of our Government. The War Department had trained and supervised its Army, its Philippine Scouts, and its Constabulary. General MacArthur had been its Military Advisor. The Philippine Independence Act of 1934 and the Philippine Constitution contemplated the use of all organized Philippine forces trained by United States Army officers. The President of the United States was Commander-in-Chief of our Army and Navy and had the *sovereign right* to induct the Philippine Army into our armed forces, which he did, as their services were required to defend that outpost of the United States.

When Congress (or the President) has meant to cover persons *with the armed forces*, as distinguished from those *in the service of the armed forces*, it has done so. (See Tit. 10, USCA Sec. 1473, making camp-

followers subject to military law.) None of the pertinent statutes or Orders employ the word "with".

The Attorney General, in 1942, ruled that the Philippine Army, ordered into the armed forces of the United States, was "in active service in the land and naval forces of the United States". (40 Op. Atty. Gen. 185, App. B, p. 78 b.)

The organized, recognized guerrillas were equally *in the service* of the *armed forces* of the United States. They were as much a part of the armed forces of the United States as were the Marines.

The Court below reached the contrary erroneous conclusion (1) by trying to distinguish the effect of the Military Order of President Woodrow Wilson under an Act of January 26, 1918 (App. A to Petition for Writ, p. 1a), from the Military Order of President Roosevelt under the Philippine Independence Act of 1934; and (2) by reference to the separate Congressional appropriations to pay for having the Philippine Army in our armed forces.

The Court's reasoning is so thoroughly disposed of in the dissent of Judge Madden in the *Logronio* case, (App., Brief in Opposition to Petition for Writ, pp. 40 to 46), incorporated herein by reference, that very little comment is required.

A mere scrutiny of the legislative history of the Act of January 26, 1918 (App. O, p. 13 b) will show that its purpose was exactly the same as the corresponding provision of the Philippine Independence Act of 1934, and that they were both used in the same general way, considering the differences in the organized armed forces in the Philippines in 1918 and in 1941. The Committee Report says:

"The object of the bill is to enable the President *to call into the service* and place under Federal control such military organizations as may be formed in the Philippine Islands pursuant to local legislation . . . The people desire to show their loyalty to the United States and their gratitude to the United States *by service rather than by word . . . This legislation is to enable the President to call such troops into the service of the United States and to use them* wherever it may be necessary or advisable." (Italics supplied.)

The Philippine Independence Act and the Ordinance appended to the Constitution of the Commonwealth of the Philippines have this very purpose and very end in virtually the same language.

The matter of appropriations need delay us little. Congress had the power and right to include the Philippine Army in a general appropriation for the War Department, or separately—by reason of a different scale of pay, which has always existed, or because it desired to treat the Philippine Army as a separate department, or for no reason at all. It was as natural to have a separate appropriation for the Philippine Army, as distinguished from the United States Army, as it was to have a separate appropriation for the Navy. The Philippine Army was still part of the armed forces of the United States, notwithstanding its having been treated separately for purposes of appropriations, as was the Navy.

From the passage of the Jones-Costigan Sugar Act of 1934 (48 Stat. 670) and the Sugar Act of 1937 (50 Stat. 915, App. L, p. 9 b) as amended, under which a processing tax was collected on the domestic processing of all sugar, the amount collected from the

processing of Philippine sugar had been returned to the Commonwealth of the Philippines. (App. L, p. 9 b.) The tax from the processing of sugar coming from Cuba, Hawaii, and Puerto Rico was retained. This fund from Philippine sugar had been used to finance the Philippines, and its continued use was contemplated in the MacArthur plan for the Philippine Department and the induction thereof into the armed forces of the United States. (App. T, p. 53 b.) This fund was insufficient, by reason of the larger armed forces in the Philippines which *we needed* in 1941. Obviously, the Philippines could not be, and were not, expected to pay this bill. So President Roosevelt first used his emergency fund and then Congress appropriated as it saw fit.

Nothing in the appropriations—in the funds from which payments were to be made—changes the character of the induction of the Philippine Army as an organized force into the United States armed forces.

The case of *United States* v. *R. P. Andrews & Company*, 207 U.S. 229, one of the first cases following the Spanish-American War, involving a contract for the benefit of the Philippine Islands, is distinctly in point.

From July, 1901, the Executive authority as to civil affairs in the Philippines was transferred to the President of the Philippine Commission, his authority being exercised under instructions from the President of the United States, subject to the direction and control of the Secretary of War. A Bureau of Insular Affairs in the War Department was given general charge of departmental business concerning the Philippine Islands. In May, 1901, the President of the

Philippine Commission had telegraphed the Secretary of War, stating the necessity for a government printing office at Manila. The Secretary of War then directed the Bureau of Insular Affairs of the War Department to purchase the necessary equipment and supplies to establish a printing office.

Pursuant thereto, the Bureau of Insular Affairs, in August, 1901, negotiated with R. P. Andrews & Company for a shipment of paper. The negotiations were carried on as though the Secretary of War were making the purchase. It was not intimated that the Bureau of Insular Affairs was acting as agent for the Philippine Islands instead of the Secretary of War. It was known that the paper was intended for use in the Philippine Islands, and the letter contained a statement that the price would be "paid from Philippine funds". The Court said, at page 239:

> "The statement of the fund from which the payment was to be made, instead of justifying the inference that the contract was intended to be made in the name of the Government of the Philippine Islands, through its agent, gives countenance to a contrary inference. (That the Bureau was not acting as agent for the Philippine Islands but as agent of the Secretary of War representing the United States.) This follows, because, if the Government of the Philippine Islands was the contracting party, its funds would, as a matter of course, be the source from which the payment was to be made. The reference, therefore, to the fund from which the payment was to be made, but served to indicate that the United States, in making the contract, contemplated that the purchase price would be discharged by it from the Philippine funds under its control."

The goods had been shipped to the carrier designated by the Secretary of War and the bills of lading had been accepted. While the contract had not been reduced to writing, signed by the contracting parties, as required by Rev. Stat. Sec. 3744, the Court held that non-compliance with that section is immaterial after the contract has been performed.

The Government was held liable upon this informal express contract.

There, as here, an informal contract was entered into. There, as here, the contract was made by an officer of the United States. There, as here, provision was later made to pay out of Philippine funds, under the control of the War Department (General MacArthur). Notwithstanding, this Court held the United States liable upon the contract.

The appropriation, "Expenses, Army of the Philippines" was enacted originally on December 17, 1941, 55 Stat. 813.

On January 3, 1942, President Roosevelt proclaimed Executive Order 9011 (7 Fed. Reg. 145) (App. B, Pet. for Writ, p. 11a), which provided, among other things, that necessary expenditures from funds in the Philippine Treasury for purposes authorized by the Act of December 17, 1941, would be made by disbursing officers of the Army of the Philippines *"on the approval or authority of the Commanding General, United States Army Forces in the Far East (General MacArthur), and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Philippine Government, . . ."* (Italics supplied.)

Clearly then, the Commanding General of the United States Army was the final authority for the expenditure of funds appropriated by Congress to run the Philippine Department, a part of the Armed Forces of the United States in the Far East.

Finally, there is nothing whatsoever in the applicable laws or orders justifying the Court's conclusion and the respondent's continued assertions that the Filipinos were "serving with" the United States Army (Brief in Opposition, pp. 7, 9, 10) rather than *serving in* the United States armed forces.

In summary, the Philippine Army was ordered or inducted into the armed forces of the United States in 1941 and served therein until the surrender in 1942; the guerrillas were organized in 1942, and thereafter fought under the express plans and orders of General MacArthur, their Commander-in-Chief; and the organized guerrillas were retroactively recognized as part of the United States Armed Forces in the Far East for the period 1942 to at least 1945, when Japan surrendered. The term of service of those still in the armed forces of the United States after 1945 terminated June 30, 1946—four days before the Philippines achieved their independence.

II. THE RECOGNIZED GUERRILLAS HAD THE RIGHT AND POWER TO REQUISITION THEIR MILITARY NEEDS AND TO THEREBY CREATE A DEBT OF THE UNITED STATES THEREFOR

Insofar as claims which involve the procurement in the Philippine Islands of supplies and material urgently needed for our armed forces conducting military operations in the Islands are concerned, it is universally recognized that such supplies and material

may be taken at any time, without Congressional or Executive authority, as needed by our armed forces. Such taking, however, it is further universally recognized, entitles the owner to the payment of just compensation, where payment therefor was not made at the time of taking.

This right and the obligation are expressed in the Hague Convention (IV) of 1907, respecting the laws and customs of war on land. Article LII of the 1907 Convention is substantially word for word the same as Article LII of the 1899 Convention, with the exception of the last phrase. (2 Treaties, etc., Malloy, 1910, 2056, 2289; 36 Stat. 2277, 2308.)

Article LII of the 1907 Convention reads, as follows:

> "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.
>
> "Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.
>
> "Contributions in kind shall so far as possible be paid for in cash; if not, a receipt shall be given *and the payment of the amount due shall be made as soon as possible.*" (Part italicized is not in the Convention of 1899.)

Article LIII of the 1907 Convention is likewise, with slight exceptions, similar to the same numbered Article of the 1899 Convention. This Article in the 1907 Convention reads, as follows:

"An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

"*All appliances, whether on land, at sea, or in the air, adapted for transmission of news, or for the transport of persons or things,* exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunitions of war, *may be seized, even if they belong to private individuals,* but must be restored and compensation fixed when peace is made."

(The words italicized in the Article above quoted indicate the essential differences between the wording of the corresponding paragraphs of the Convention of 1907 and the Convention of 1899.)

The Rules of Land Warfare, issued by order of the Secretary of War, on October 1, 1940 (FM 27-10, 1940), 84-85—in effect at the outbreak of war against Japan—"for the information and guidance of all concerned"—contain the following provisions covering "requisitions":

Article 335 embodies, word for word, Article LII of the Hague Convention of 1907, *supra.* (App. W, p. 58 b.)

Article 336 reads:

"What may be requisitioned.—Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food, forage, clothing, tobacco, printing presses, type, leather, cloth, etc. Billeting of troops for quarters and sustenance is also authorized."

The other pertinent Rules of Land Warfare are found in App. W, p. 58 b.

It is self-evident that these Rules gave every commanding officer in the field in the Philippines all of the leeway required for him to acquire *all* urgently needed supplies and material for the operation and maintenance of the troops under his command, without legislation. (See App. S, p. 31 b, as to transportation.)

It is common knowledge that our armed forces operating in the Philippines were operating not only many thousands of miles from home, but also with an inadequate store of supplies and material necessary for the use of our armed forces. This is particularly true after the surrender in 1942, when guerrilla operations became necessary and were carried on. Requisitions were required and indeed anticipated, and made. (App. S, p. 31 b.)

The Rules of Land Warfare, as above quoted and in Appendix W., gave our officers in the field full authority to acquire whatever supplies and material were required by the armed forces which the local area could afford. They also recognized the obligation on the part of the United States to make just compensation for any of such supplies and material that were procured for the necessary use of *our* armed forces and not paid for at the time of their requisition.

In fact, General MacArthur having recognized and assumed the responsibility of the United States Army therefor (App. AA, p. 77 b), thousands of such claims based upon such requisitions by guerrillas were settled and paid by the Army Claims Service established for that purpose in April 1945, and extended to guerrilla claims in August 1945, out of funds appropriated by Congress. (App. Y, Z and AA, pp. 61 b to 78 b.)

The First War Powers Act of 1941 (55 Stat. 838; 50 U.S.C.A., App. 611) conferred on the President the most extensive powers in connection with defense of the nation. (App. I, p. 5 b.)

The Military Requisition Act of October 16, 1941 (55 Stat. 742; 50 U.S.C.A., App. 721), in effect, merely clarifies the provisions with respect to obtaining supplies and material embodied in the Hague Conventions of 1899 and 1907 and in the Rules of Land Warfare, *supra*, and does not add anything to the power inherent in this Nation to carry on effective military activities in any theater of operations where it might be engaged (App. H, p. 2 b).

The constitutionality of this Act was sustained in *In re: Inland Waterways, Inc.* (1943) (49 F. Supp. 675). See also *Commodities Trading Company* v. *United States*, 113 Ct. of Cls. 244, reversed, 339 U.S. 121.

The right of the military commander to requisition supplies and material vitally needed for his operations is recognized by the authorities on International Law (App. CC, p. 81 b).

To what extent can it be said that the internationally recognized rules of general application are not applicable to the Philippines, in the subject case? Can it be said that the Autonomy Act of August 29, 1916, (39 Stat. 547; 48 U.S.C. 1003) (App. G, p. 1 b), by its terms prohibits the application of the general principles of International Law to the Philippines, or that the application of the First War Powers Act of 1941 nullifies the principles, in the face of the Military Requisition Act of 1941, which merely recognizes these

rules and puts them into operation, as respondent has contended in the United States Court of Claims?

The answer is simple: in no measure—to no extent. The Requisition Act of 1941 and the general principles of International Law are applicable to the requisitions by the guerrillas—our armed forces in the Philippines during World War II.

In the case of *Jacobs* v. *The United States,* 290 U.S. 13, 16, 17, involving payment for property taken over by the United States, Mr. Justice Hughes says that the right to

> ". . . just compensation for property taken by the United States for public use . . . was guaranteed by the Constitution. The fact . . . that the right was asserted in suits by the owners did not change the essential nature of the claim. The form of the remedy did not qualify the right. It rested upon the Fifth Amendment. Statutory recognition was not necessary. Such a promise was implied because of the duty to pay imposed by the Amendment. The suits were thus founded upon the Constitution of the United States . . .
>
> "The amount recoverable was just compensation, not inadequate compensation."

A similar conclusion was reached by Mr. Justice Frankfurter in the case of *United States* v. *Dickinson,* 331 U.S. 745.

The First War Powers Act of 1941, *supra,* conferring specific powers on the President, makes no reference to the Autonomy Act of August 29, 1916, except that sec. 301, Title III, of said First War Powers Act, amends sec. 5(b), as amended, of the Trading with the Enemy Act of 1917, to read in part as follows:

"3). As used in *this subdivision* the term 'United States' means the United States and any place subject to the jurisdiction thereof, including the *Philippine Islands,* and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands, and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising on the high seas . . . "

The directive of April 7, 1945, establishing the Army Claims Service in the Philippines (App. Z, p. 69 b), extended by General MacArthur August 6, 1945, to claims arising out of requisitions by organized guerrillas, (App. AA, p. 77 b), appears to be by authority of the First War Powers Act of 1941, which itself did not specifically mention the Philippines, except in connection with amending the Trading with the Enemy Act. Why is that Act more applicable to the Philippines and a source of authority for settling claims against the Army than is the Military Requisition Act of 1941?

The Congress, by an Act of July 16, 1918 (40 Stat. 903), provides pensions for widows and children of officers and enlisted men who served in the war with Spain, in the Philippine insurrection, or in the Boxer campaign. This was only two years after the Autonomy Act of 1916, of which the very next Congress was very cognizant. No mention, however, was made of Philippines claimants. It was, nonetheless, held to apply to the Philippine Islands in *People* v. *Tan,* 57 P.I. 71.

More recently, the National Life Insurance Act, 1940, as amended (54 Stat. 1008), which provides life

insurance for the members of the armed forces of the United States, although it likewise contains no reference to the Philippine Islands, has been held applicable to the Philippines. (40 Op. Atty. Gen. 185, App. BB, p. 78 b.)

In the opinion rendered April 27, 1942, the Attorney General, after an extended discussion of the status of the organized military forces of the Government of the Commonwealth of the Philippine Islands, held that the Act entitles the members of such Philippine forces to the benefits of the Insurance Act, saying in part:

> " . . . it seems clear that personnel of the organized military forces of the Commonwealth of the Philippines called and ordered into the Armed Forces of the United States, under the Military Order of the President, of July 26, 1941, are in the active service of the land and naval forces of the United States."

By precisely the same token, without specifically naming the Philippines, the Military Requisition Act of 1941, provides specific wartime legislation to insure, so far as possible, that *our armed forces,* in whatever distant theater of operations, including the Philippine Islands, in the defense of our Nation, would have the right, so far as the United States could grant such right, to procure by requisition, or by any other means necessary, the available supplies and material necessary for the maintenance of such forces. The obligation to make just compensation was of necessity incorporated therein along with the right to requisition.

The Appeal Board, Office of Contract Settlement, has itself held, in *Ignacio* v. *Navy,* 3 App. Bd. O.C.S.

No. 260, p. 151, *Haussermann* v. *Navy*, 2 App. Bd. O.C.S. 242, p. 186, and *Manila Trading & Supply Co.* v. *Navy*, 2 App. Bd. O.C.S. No. 181, pp. 172, 190, that the Contract Settlement Act of 1944 applies to the Philippines, notwithstanding the Autonomy Act of 1916, even though no mention of the Philippines is made therein.

The Board properly reasoned that the Act applied to *any person* who furnished supplies needed for the prosecution of the war, that Congress knew that such supplies would be furnished in the Philippines, and that nowhere in the Act does it appear that the Act would not apply to persons who furnished supplies for the war in the Philippines. There is no basis for reasoning differently in the subject case.

The Military Requisition Act of 1941 was strictly within the powers of Congress, as set out in the Constitution, and applied with full force and effect wherever the armed forces of the United States might be engaged.

Article I, sec. 8, of the Constitution gives the Congress the power, in the 11th clause, "to declare war"; in the 12th clause, "to raise and support armies"; in the 14th clause, "to make rules for the government and regulation of the *land and naval forces*"; while the Fifth Amendment to the Constitution expressly provides that "private property" shall not "be taken for public use without just compensation".

Accordingly, the provisions of the Autonomy Act do not apply to powers exercised under the Military Requisition Act of 1941, (as well as under the Hague Conventions and the Rules of Land Warfare).

There is no question that the supplies involved in this case were taken and used by the United States armed forces in the Philippines and have not been paid for to this date.

Petitioner, on the basis of the authorities hereinbefore cited, emphatically urges (1) that in the national emergency our armed forces had ample power, under the Hague Conventions, the Constitution of the United States, the decisions of Courts of the United States, and the Rules of Land Warfare for the guidance of our Army, to requisition in the Philippines anything available and required for the needs of our armed forces in their military operations in the Islands, and that when it did so there was an obligation of the United States to make just compensation therefor, and (2) that neither in the requisition nor in the establishment of an authority to determine the responsibility of the United States was there required to be any delegation of authority, either under the Military Requisition Act of 1941 or any other Act. *International Paper Company* v. *United States,* 68 Ct. of Cls. 411, rev. 282 U.S. 399; *Roxford Knitting Co.* v. *Moore & Tierney,* 265 F. 177, 179, cert. den. 253 U.S. 498.

The following is a significant statement by Mr. Justice Holmes, in *International Paper Co.* at p. 406:

> " . . . The Government exercised its power in the interest of the country in an important matter, without difficulty, so far as appears, until the time comes to pay for what it has had. The doubt is late."

In *Roxford Knitting Co.* v. *Moore & Tierney, supra,* the Circuit Court of Appeals for the Second Circuit says, at p. 179:

> "In time of war, or of impending public danger, and without statutory authorization, private property may be appropriated to the public use. In *Mitchell* v. *Harmony,* 13 How. 115 113, Chief Justice Taney states that there are, without doubt, occasions in which a military officer may impress private property into the public service, or take it for public use; the Government being bound in all such cases to make full compensation to the owner . . . "

What the Courts have said in those two cases is quite apt in the subject case.

The fact that the authority for the War Claims Service was considered by the War Department to be under the First War Powers Act of 1941, rather than under the Military Requisition Act of 1941, or under its general war powers, is of no significance, any more than is the authority under which the officers of USAFFE purported to act at the time of the requisition, when the act of requisition was permitted and justifiable without any specific grant of authority. The establishing of the War Claims Service was purely an administrative act to clarify the subject matter for the benefit of those administering the powers given them to hear and determine claims. The obligation recognized by the establishment of the Claims Service existed under the Hague Conventions, under decisions of our Courts, under the Rules of Land Warfare for the guidance of our Army, and under the Military Requisition Act of 1941, equally. The arguments of the Government, seeking to avoid payment, "come late",

as stated by the Supreme Court, in *International Paper Co., supra.*

The inevitable conclusions to be drawn from the foregoing are:

The recognized Philippine guerrillas were part of the United States armed forces in the Philippines. The United States armed forces in the Philippines had the right and power to requisition supplies and materials for their military needs and sustenance and to give receipts therefor agreeing that eventually the United States Army would pay. Requisitions of the total value of $119,765.75 were made of petitioner by guerrillas who were recognized as elements of USAFFE, receipts therefor were given, and it was agreed that the United States Army would pay, all of which created a debt of the United States therefor. Payment has not been made.

The United States is bound to pay for provisions actually supplied to the armed forces of the United States, the United States Army, the United States Navy, the Philippine Army—all part of USAFFE, and the organized guerrillas who were part of USAFFE, in good faith, by a supplier who expected that such supplies would be used in benefit of the United States, which they were, and that the United States would pay therefor.

CONCLUSION

Unless it is now to be held (1) that the United States, under all applicable laws and the Constitution, had the sovereign right and power to make the Filipinos fight for us as part of our armed forces in *our* war against Japan, and (2) that the Filipinos in-

ducted into our armed forces, who fought as organized guerrillas and were later recognized as elements of USAFFE during the period of guerrilla warfare, had the right and power, under International Law, all applicable International Conventions and laws of the United States, to requisition supplies and material for their military needs and sustenance during World War II, but (3) that there is no obligation of the United States to pay for the supplies and material so requisitioned to support our armed forces, then the order below must be reversed.

Respectfully submitted,

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APPENDIX F

28 U.S.C.A. 1255

§ 1255. Court of Claims; Certiorari; certified questions

Cases in the Court of Claims may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted on petition of the United States or the claimant;

* * * * * *

APPENDIX G

Autonomy Act of August 29, 1916
Ch. 416, 39 Stat. 545

CHAP. 416.—An Act To declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better pre-

pared to fully assume the responsibilities and enjoy all the privileges of complete independence:

* * * * * *

Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.

* * * * * *

APPENDIX H

Military Requisition Act of October 16, 1941
Ch. 445, 55 Stat. 742

AN ACT

To authorize the President of the United States to requisition property required for the defense of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1943, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation

for such property to be determined as hereinafter provided, and to dispose of such property in such manner as he may determine is necessary for the defense of the United States. The President shall determine the amount of the fair and just compenastion to be paid for any property requisitioned and taken over pursuant to this Act and the fair value of any property returned under section 2 of this Act, but each such determination shall be made on the basis of the fair market value of the property at the time it is requisitioned or returned, as the case may be. If, upon any such requisition of property, the person entitled to receive the amount so determined by the President as the fair and just compensation for the property is unwilling to accept the same as full and complete compensation for such property he shall be paid 50 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided by sections 24 (20) and 145 of the Judicial Code (U.S.C., 1934 ed., title 28, secs. 41 (20) and 250) for an additional amount which, when added to the amount so paid to him, he considers to be fair and just compensation for such property. Such courts shall also have power to determine in an appropriate proceeding any questions upon the return of any property under section 2 of this Act, regardless of the amount in controversy in any such proceeding.

Nothing contained in this Act shall be construed—

(1) to authorize the requisitioning or require the registration of any firearms possessed by any individual for his personal protection or sport (and the possession of which is not prohibited or the registration of which is not required by existing law),

(2) to impair or infringe in any manner the right of any individual to keep and bear arms, or

(3) to authorize the requisitioning of any machinery or equipment which is in actual use in connection

with any operating factory or business and which is necessary to the operation of such factory or business.

Sec. 2. Wherever the President determines that property acquired under this Act and retained is no longer needed for the defense of the United States, he shall, if the original owner desires the property and pays the fair value thereof, return such property to the owner; but, in any event, property so acquired and retained shall, if the owner desires the property and pays the fair value thereof, be returned to the owner not later than December 31, 1943.

Sec. 3. The President from time to time, but not less frequenlty than once every six months, shall transmit to the Congress a report of operations under this Act.

Sec. 4. The President may issue such rules and regulations and require such information as may be necessary and proper to carry out the provisions of this Act, and he may exercise any power or authority conferred on him by this Act through such department, agency, board, or officer as he shall direct or appoint.

Approved, October 16, 1941.

APPENDIX I

First War Powers Act, 1941

December 18, 1941. Ch. 593, 55 Stat. 838

* * * * * *

TITLE I—COORDINATION OF EXECUTIVE BUREAUS IN THE INTEREST OF THE MORE EFFICIENT CONCENTRATION OF THE GOVERNMENT.

§ 601. Coordination of executive bureaus, offices, etc., by President for national defense and to prosecute the war; issuance of regulations

For the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the Army and Navy, the President is authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title [sections 601-605 of this Appendix], and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be published in accordance with the Federal Register Act of 1935 [sections 301-310 and 311-314 of Title 44]: *Provided,* That the termination of this title [sections 601-605 of this Appendix], shall not affect any act done or any right or obligation accruing or accrued pursuant to this title [sections 601-605 of this Appendix], is in force: *Provided further,* That the authority by this title [sections 601-605 of this Appendix], granted shall be

exercised only in matters relating to the conduct of the present war: *Provided further,* That no redistribution of functions shall provide for the transfer, consolidation, or abolition of the whole or any part of the General Accounting Office or of all or any part of its functions.

* * * * * * *

TITLE II—CONTRACTS

§ 611. War contracts exempt from certain restrictions upon authorization by President

The President may authorize any department or agency of the Government exercising functions in connection with the national defense, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war:

* * * * * * *

TITLE III—TRADING WITH THE ENEMY

§ 616. Amendment of section 5 of this Appendix and section 95a of title 12

The first sentence of subdivision (b) of section 5 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended [section 95a of Title 12 and section 5 of this Appendix], is amended to read as follows:

* * * * * * *

"(3) As used in this subdivision the term 'United States' means the United States and any place subject to to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the

Commonwealth of the Philippines Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas . . ."

• • • • • • •

§ 620. ADDITION OF SECTIONS 33-37 OF THIS APPENDIX

Sec. 305. The Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended [sections 1-6 and 7-39 of this Appendix] is further amended by inserting after section 32 thereof, and before the section added by Public Law 382, Seventy-ninth Congress [section 38 of this Appendix], the following sections:

• • • • • • •

"Sec. 34. (a) . . . Debt claims allowable hereunder shall include only those citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act [section 21 of this title]; and those acquired by the Custodian . . ."

• • • • • • •

APPENDIX J

Declaration That a State of War Exists Between the Imperial Government of Japan and the United States

A State of War between Japan and the United States was declared to exist by the Joint Resolution of December 8, 1941, c. 561, 55 Stat. 795.

END OF WORLD WAR II IN THE PHILIPPINES

The Imperial Government of Japan surrendered in the Philippine Islands September 2, 1945.

Termination of State of War With Japan

The Treaty of Peace with Japan was signed in the City of San Francisco on September 8, 1951. Chapter 1, Article I, provides:

> "(a) The state of war between Japan and each of the Allied Powers is terminated as from the date on which the present treaty comes into force between Japan and the Allied Power concerned as provided for in Article XXIII."

The cessation of hostilities of World War II was officially proclaimed by the President of the United States, Proclamation No. 2714, 12 F.R. 1, of December 31, 1946, as follows:

> "Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II effective 12 o'clock noon December 31, 1946."

APPENDIX K

(57 Stat. 590)

Joint Resolution

Relating to the tenure of office of the present President and Vice President of the Philippines.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of section 5 of article VII of the amended Constitution of the Philippines, the present President and Vice President of the Commonwealth of the Philippines serving at the time of the introduction of this joint resolution shall continue in their

respective offices until the President of the United States shall proclaim that constitutional processes and normal functions of government shall have been restored in the Philippine Islands. Thereupon, the tenure of office of the present President of the Commonwealth shall cease and the Vice President shall become President to serve until such time as his successor shall have been elected and qualified according to the Constitution and the laws of the Philippines.

Approved November 12, 1943.

Quezon was elected President November 15, 1935.

Quezon died August 1, 1944, and Osmena took the oath of office as President on that date at Washington, D. C. and automatically became Commander-in-Chief of the Philippine Army (App. Q).

APPENDIX L

(50 Stat. 915)

Sugar Act of 1937

(Approved September 1, 1937)

* * * * * *

TITLE V—GENERAL PROVISIONS

* * * * * *

SEC. 503. There is authorized to be appropriated an amount equal to the amount of the taxes collected or accrued under title IV on sugars produced from sugarcane grown in the Commonwealth of the Philippine Islands which are manufactured in or brought into the United States on or prior to June 30, 1941, minus the costs of collecting such taxes and the estimates of amounts of refunds required to be made with respect to such taxes, for

transfer to the Government of the Commonwealth of th Philippines for the purpose of financing a program o economic adjustment in the Philippines, the transfer t be made under such terms and conditions as the Presi dent of the United States may prescribe: *Provided,* Tha no part of the appropriations herein authorized shall b paid directly or indirectly for the production or process ing of sugarcane in the Philippine Islands.

* * * * * * *

TABLE 20.

Entries and marketings of sugar in Continental United States from all areas, 1900-52-Continued

(1,000 Short tons, raw value)

Year[1]	Philippines
1934	1,088
1935	917
1936	985
1937	991
1938	981
1939	980
1940	981
1941	855
1942	23
1943	0
1944	0
1945	0

[1] Data on . . . calendar year basis 1919-1952.

Sugar Statistics: U. S. Department of Agriculture, Pro duction and Marketing Administration, Sugar Branch June 1953. The processing tax was at the rate of 0.46 cents per pound on sugar testing by the polariscope 9 sugar degrees and 0.00875 cents for each additional sugar degree, or about $9.60 per short ton of Philippine sugar.

APPENDIX M

Executive Order No. 9011

(7 Fed. Reg. 145, January 3, 1942)

Provides, in part:

". . . hereby prescribes the following regulations governing the manner of expending and accounting for funds appropriated for the Army of the Philippines:

"DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE UNITED STATES

"1(b). Advances or reimbursements made to the Government of the Commonwealth of the Philippines by disbursing officers of the Army of the United States, as authorized by the Commanding General, United States Army Forces in the Far East, for necessary expenses authorized by the Act of December 17, 1941, will be accounted for on vouchers evidencing the amounts advanced to or paid as reimbursement to the Government of the Commonwealth of the Philippines, but such vouchers need not be supported by vouchers paid by disbursing officers of the Army of the Philippines.

"DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE PHILIPPINES

"2(a). Necessary expenditures from funds in the Philippine Treasury for the purposes authorized by the act of December 17, 1941, will be made by the disbursing officers of the Army of the Philippines *on the approval or authority of the Commanding General, United States Army Forces in the Far East, and*

*for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Philippine Government.** . . ." (Italics supplied.)

APPENDIX N

Executive Order 9001 (6 Fed. Reg. 6787, issued December 27, 1941, as amended by Executive Order 9296, 8 Fed. Reg. 1429, January 30, 1943,) authorized the War Department, among other things:

"1. . . . within the limits of the amounts appropriated therefor to enter into contracts . . . heretofore or hereafter made . . . without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts. . . . The Secretary of War . . . may confer upon any officer or officers of [this Department] . . . the power to make further delegations of such powers within the War . . . Department . . ."

"2. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war . . . including but not limited to . . . equipment, or supplies of any kind, or any portion thereof . . .

"3. The War Department . . . may by agreement . . . settle claims under contracts heretofore or hereafter made . . ."**

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* General MacArthur, not President Quezon or President Osmena.

** Specific authority to requisition and to establish Army Claims Services.

APPENDIX O

Act of January 26, 1918 (H.R. 7697)

65th Cong., 2d Sess., Public No. 97, Chapter 11.
40 Stat. 432.

House Report 225 (Volume 7307 Lib. of Cong.).
S. Report 195 (Volume 7304, Lib. of Cong.).

Mr. Dent, reporting for the Committee on Military Affairs, said in part as follows (page 1):

"The Committee on Military Affairs, to whom was referred the bill [H.R. 7697] to authorize the calling into the service of the United States the militia and other locally created armed forces of the Philippine Islands, and for other purposes", etc.

In support thereof there was printed a letter from the War Department, Bureau of Insular Affairs, dated December 8, 1917, signed by Frank McIntyre, Chief of Bureau, which reads in part as follows:

"My Dear Mr. Dent:

"At the last session of Congress there was included in bills introduced by you and by the Chairman of the Senate Committee on Military Affairs a *provision authorizing the President of the United States to call into the service of the United States and make use of certain military forces organized by the Philippine Government under an act of the Philippine legislature.*

"These bills included many other sections, many of the important provisions of which were included in the bill to increase the Military Establishment of the United States. It is possible, therefore, that these bills will not again come up for consideration. The section, however, authorizing the utilization of the Philippine troops is most important and I hope that it will be possible to introduce it as a separate measure and that it may be passed early in this session.

"The Philippine Government has gone forward as rapidly as possible in organizing its troops, has followed, in so far as practicable, the steps taken in the United States with reference to officers' training camps and other details of instructions, and that government is naturally desirous that its efforts be recognized as soon as possible and that the men will receive that encouragement which can only come with a knowledge that their efforts are to be made use of."

There followed the proposed section which was adopted as the Act of January 26, 1918, with a recommendation that it be adopted.

The Committee report goes on at page 2 as follows:

"*The object of the bill is to enable the President of the United States to call into the service and place under Federal control such military organizations as may be formed in the Philippine Islands* pursuant to local legislation. While, therefore, this legislation is necessary as placing such armed forces on a proper basis with reference to the National Government, it is particularly necessary at this time in order that the United States may use certain armed forces in the Philippine Islands for the purposes for which they were especially created by the Philippine Government. The people of the Philippine Islands and the Government of the Philippines are—we are informed by General T. L. Hartigan, National Guard, Philippine Islands, and by Resident Commissioner Yangco, of the Philippine Islands, who stated that he had conferred with his colleague, Resident Commissioner de Veyra, who concurred in the belief—with the United States in the present war. *The people desire to show their loyalty to the United States and their gratitude to the United States by service rather than by word.* The object of this legislation is to enable him to do this. Specifically, it is contemplated that the equivalent of a division of troops will be organized in the Philippine Islands. *This legislation is*

to enable the President to call such troops into the service of the United States and to use them wherever it may be necessary or advisable. This division has been very largely organized. To complete its organization requires the stimulus which it will receive from the knowledge that it is to be used and that their offer of service is appreciated and will be availed of." (Italics supplied).

The Senate report contains a letter signed by the Secretary of War, Newton D. Baker, dated December 11, 1917, in exactly the same language as the letter to the House Committee.

APPENDIX P

House Documents, Volume 53, No. 111

THE SIXTH ANNUAL REPORT OF THE UNITED STATES HIGH COMMISSIONER TO THE PHILIPPINE ISLANDS COVERING THE FISCAL YEAR JULY 1, 1941, TO JUNE 30, 1942. (Dated October 30, 1942)

I. General Statement

Page 1

* * * * * * *

* * * Nevertheless, the transition from civilian to military control was marked by no formal procedure; at no time was martial law declared in Manila nor did the United States find it necessary under the powers provided by section 2 (a) (14) of the Independence Act to intervene by Presidential proclamation. Up to the very end the Commonwealth Government continued, within the limits fixed by the Independence Act, as amended, to carry the responsibility for the civil government of the islands.

* * * * * *

Page 2

Military Command

The military defense of the Philippines at the opening of the fiscal year was under the direction of Maj. Gen.

George Grunert, in command of the Philippine Department. General Grunert, an able and effective officer, pressed the work of preparation and reorganization in the Philippine Department and at the same time kept vigorously requesting additional supplies, ammunition, and equipment from Washington. He held the deep loyalty and admiration of his troops.

On July 26, 1941, the President of the United States *ordered the incorporation of the Philippine armed forces into the United States Army,* and on the same day appointed Gen. Douglas MacArthur, formerly Chief of Staff of the United States Army, then military adviser to the Commonwealth Government, to be commander in chief of a new organization to be known as the United States Army Forces in the Far East. As such, he assumed supreme command over the Philippine Department and all United States troops in the Far East. At a time when Japanese war clouds were growing ominously black the President thus placed in command of American forces in the East a man whose brilliant career placed him in the forefront of the military leaders of the world. It was a significant move and it affected the entire military situation of the East. General MacArthur with characteristic vigor and initiative threw himself at once into the work of building up our defense forces and calling for additional material and supplies from Washington. At the same time *he pushed forward the work of inducting Philippine Army troops into the service of the United States Army,* and giving them intensive training under regular United States Army officers. By the time war broke out the bulk of Philippine reservists had been so inducted; and many of these, together with the Philippine Scout troops, played a heroic part in the later defense of Bataan and Corregidor.

* * * * * *

Page 9

Message From President Roosevelt

On December 28, 1941, the President sent a message to the people of the Philippine Islands. It was broadcast by short-wave radio direct to Manila where it was rebroadcast and given to the press. The text of the message is in part, as follows:

"The People of the Philippines:

"News of your gallant struggle against the Japanese aggressor has elicited the profound admiration of every American. As President of the United States, I know that I speak for all our people on this solemn occasion.

* * * * * *

* * * In this great struggle of the Pacific the loyal Americans of the Philippine Islands are called upon to play a crucial role.

"They have played, and they are playing tonight, their part with the greatest gallantry.

"As President I wish to express to them my feeling of sincere admiration for the fight they are now making.

* * * * * *

"It is not for me or for the people of this country to tell you where your duty lies. We are engaged in a great and common cause. I count on every Philippine man, woman, and child to do his duty. We will do ours."

* * * * * *

II. Military and Naval Activities and Civilian Defense

Military Developments

As relations with Japan became increasingly tense, the tempo of military preparations in the Philippines was stepped up. Maj. Gen. George Grunert, in command of the Philippine Department, kept pressing Washington for additional personnel, ammunition, and equipment and

pushing the work of preparing, strengthening, and reorganizing the defense of the islands. *On July 26, 1941* (July 27, Manila date), *President Roosevelt ordered the incorporation of the Philippine armed forces in the United States Army and appointed Gen. Douglas MacArthur as commander of the United States Army forces in the Far East.* Shortly after General MacArthur received this appointment his headquarters issued the following statement:

"The general plan for the integration of all armed forces in the Philippines has been formulated by General MacArthur. It envisions a progressive incorporation of the reserve divisions of the Philippine Army into the service of the United States. It comprehends eventually all elements of the Philippine Army, but until an actual outbreak of hostilities will not include these echelons which are engaged in the normal yearly training activities. This will enable the Philippine Army to continue its uniform development in accordance with the national defense program of the Commonwealth and at the same time *muster for prompt American Army training and service* the other components of the Commonwealth's forces. The constabulary will not be taken over with the exception of certain selected elements.

* * * * * *

The program has been heartily endorsed by President Quezon and is expected to effectuate in a most comprehensive manner the purposes underlying President Roosevelt's proclamation."

Steps were taken immediately to call to service reservists and to train them, as well as Philippine troops on active service, as rapidly as possible. On August 2 an order was issued calling to duty 1 regiment of reservists from each of the 10 military districts plus the personnel of the training cadres from the remaining units of 1 division in each of the 10 military districts. *On August 15,* following

a brief ceremony, *the Philippine Army Air Corps*, involving 6 squadrons and some 500 officers and men, *was incorporated into the American forces*. Reservists not included in the first call were subsequently called up as fast as quarters and training facilities were ready and by December 1941 most qualified reservists had been inducted into the United States Army. Considerable reinforcements, both men and material, were received from the United States and military installations in the islands were improved. Notable increases were made in the air force and ground aviation facilities.

The calling into the service of the armed forces of the United States of the Commonwealth government military forces necessitated the assumption by the United States of expenses previously borne by the Commonwealth. At the same time, the expenses of our military esablishment in the Philippines were being augmented by the increased number of American troops in the islands. To finance the calling of Philippine troops into the service of the United States armed forces and to maintain them until regular appropriations had been made, the President of the United States advanced $15,000,000 from his emergency fund.[1] In December 1941[2] Congress appropriated $269,000,000 "for all expenses necessary for the mobilization, operation, and maintenance of the Army of the Philippines, including expenses connected with calling into the service of the armed forces of the United States the organized military forces of the Government of the Commonwealth of the Philippines * * * of which not to exceed $15,000,000 may be restored to the Emergency Fund for the President * * * in reimbursement of a like amount advanced therefrom * * *". This appropriation was to remain available until June 30, 1943.

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No large concentrations of *United States troops* were sent against Japanese forces landed at the extremities of Luzon presumably because of the danger that they might be cut off and surrounded by Japanese troops landed nearer Manila. (Mainly Filipinos).

• • • • • •

During January *our forces on Bataan* sustained heavy attacks and at one time were obliged to fall back a considerable distance in order to shorten their lines. (Mainly Filipinos) (Italics Supplied).

FRANCIS B. SAYRE,
United States High Commissioner to the Philippine Islands.

APPENDIX Q

Constitution of the Philippines

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 5 (9) No person shall serve as President for more than eight consecutive years. The period of such service shall be counted from the date he shall have commenced to act as President. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service of the incumbent for the full term for which he was elected.

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8 and 9, *1939 Amendments*, Art. II, sec. 1.

Effective Dec. 30, 1941.

The original sections 5 and 6 of the Constitution read as follows:

"Sec. 5. Elections for President and Vice-President shall be held once every six years on a date to be fixed by the National Assembly."

Sec. 10. (2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

ORDINANCE APPENDED TO THE CONSTITUTION

Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

* * * * * * *

(12) The Philippines recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

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APPENDIX R

First National Assembly
Inaugural Session B. No. 102

Commonwealth Act No. 1

AN ACT TO PROVIDE FOR THE NATIONAL DEFENSE OF THE PHILIPPINES, PENALIZING CERTAIN VIOLATIONS THEREOF, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

* * * * * *

TITLE II.—MILITARY ORGANIZATION

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ARTCLE II.—The Regular Force

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Sec. 22. The appointment, promotion, and discharge of officers in the Army shall be as follows:

(a) All commissioned officers in the Army shall be citizens of the Philippines; *Provided,* That the President may in his discretion retain in the Army any officer now holding a commission in the Philippine Constabulary. Commissioned grades authorized in the Army of the Philippines shall include third lieutenant, second lieutenant, first lieutenant, captain, major, lieutenant colonel, colonel, and general officer: *Provided,* That the general officer grade may be further subdivided into grades as prescribed by the President: *And provided, also,* That individuals permanently commissioned in a grade above that of colonel shall be known as General Officers of the Line; those not so commissioned but holding an office in the Army to which the grade of general officer is attached shall be known as General officers of the Staff.

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ARTICLE III.—Enlistment and Reenlistment

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Sec. 27. Any male citizen of the Philippines between eighteen and thirty years of age, able-bodied, free from disease, of good moral character and habits, of average intelligence, and possessed of such educational attainments as may be prescribed, may be enlisted in the Regular Force under the following restrictions:

(a) Enlistments shall be for a term of three years, and may be made by the recruiting officers at stations of the Regular Force.

(b) Unmarried minors between eighteen and twenty-one years of age may be enlisted only on the written and duly attested consent of the father, the mother when she is the only surviving parent, or the publicly-known guardian.

(c) Enlistments for service in any province, except for the Regular Division, the Artillery Corps, and Air Corps, shall be from among residents thereof. In so far as practicable, enlistments in these forces shall be apportioned among the various provinces of the Philippines.

(Authority for Executive Order No. 21, App. X).

APPENDIX 8

U.S. ARMY IN WORLD WAR II
THE WAR IN THE PACIFIC
THE FALL OF THE PHILIPPINES

By Louis Morton

Office of the Chief of Military History
Department of the Army

. . . . . .

pp. 8-9.

The Philippine Army

Before the establishment of the Commonwealth Government in 1935, no effort was made to prepare the Philippines for their own defense. The United States had assumed all obligations for national defense and maintained a garrison in the Islands for that purpose. This garrison numbered about 10,000 men, half of whom were Philippine Scouts, a U. S. Army unit in which the enlisted men, with some exceptions, were native Filipinos and most of the officers American. After 1913 the Philippine garrison was called the Philippine Department, a regular U. S. Army establishment commanded by an American general officer.

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p. 9. One of the first problems of the newly established Commonwealth Government was to make provision for the defense of the archipelago. Such a task required a man with proven military and executive ability, and, since there was no likely candidate in the Philippines, the President-elect Manuel L. Quezon turned to the United States for help. In the summer of 1935, he induced his friend Gen. Douglas MacArthur, then Chief of Staff of the U. S. Army, to become the military adviser to the new government in its effort to organize a national army. President Roosevelt's consent was readily obtained and arrangements quickly concluded.

. . . . . .

General MacArthur selected Majs. Dwight D. Eisenhower and James B. Ord as his principal assistants. With the aid of a special committee from the Army War College, they prepared a plan to provide the Philippine Commonwealth with a system of national security by 1946, the date the Islands would become independent.

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p. 10. The first legislative measure of the Philippine National Assembly was the passage, on 21 December 1935, of the National Defense Act, which embodied the plan proposed by General MacArthur.

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p. 11. Although the district commanders were responsible for defense plans, the Office of the Military Advisor drew up the plans for all major islands—Luzon, Cebu, *Negros*, Panay, Leyte, Mindanao, Bohol, Mindoro—as well as many of the smaller ones.

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pp. 14-15. The Philippines was only one of many bases that had to be protected. Hawaii, Alaska, and Panama—which formed a strategic triangle whose defense was considered essential to the safety of the continental United States—had also been neglected and their needs had to be filled first. "Adequate reinforcements for the Philippines at this time," wrote Gen. George C. Marshall, "would have left the United States in a position of great peril should there be a break in the defense of Great Britain."[1]

What the United States needed more than anything else was time. But Japan's occupation of naval and air bases in southern Indochina on 22 July 1941 gave warning that time was short. *The Philippine Islands, already almost entirely surrounded, were now further threatened and*

[1] *Biennial Report of the Chief of Staff of the United States Army, July 1, 1941 to June 30, 1943 to the Secretary of War* (Washington, 1943), p. 6.

America's position in the Far East rendered precarious. Measures to strengthen the defense of the Philippines could be put off no longer.

The Recall of General MacArthur

The establishment of a new American command in the Far East and the recall of General MacArthur to active duty in the U. S. Army were already under consideration when Japan moved southward in July 1941.

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By a coincidence, on the same day that Stimson talked with Stevenot, Maj. Gen. George Grunert, the Philippine Department commander, asked permission from the War Department to include representatives of the Commonwealth Government in conferences then being held in Manila. The purpose of these meetings was to formulate plans, based on the expected use of $52,000,000 in sugar excise funds, for improving the defenses of the Islands.

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pp. 15-16. The first direct bid for the recall of General MacArthur came from the former Chief of Staff himself and was contained in a letter to General Marshall.[4] In this letter MacArthur stated that since the Philippine Army was to be absorbed by the U. S. Army in the near future—a step not yet contemplated by the War Department—he intended to close out the office of Military Advisor. *A new American military command embracing all U. S. Army activities in the Far East,* comparable to the British command in that area, should be established, he told the Chief of Staff, and he, MacArthur, be named commander.

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[4] The author has been unable to find a copy of this letter in the files of the War Department but its contents are summarized in a memorandum written by General Gerow and addressed to the Chief of Staff on 6 June 1941 (WPD 3251-50). From internal evidence it appears that MacArthur on the same day wrote a letter covering the same subjects to the President and the Secretary of War. See also ltr, Marshall to MacArthur, 20 Jun 41, WPD 3251-50. (App. T)

p. 17. A week later General Gerow summarized for the Chief of Staff the steps being taken for improving the defenses of the Philippine Islands, and on 17 July made the following specific recommendations:

1. That the President, by executive order, call into the service of the U. S. for the period of the emergency all organized military forces of the Commonwealth.

2. That General MacArthur be called to active duty in the grade of Major General and assigned as commander of Army Forces in the Far East.

3. That $10,000,000 of the President's Emergency Fund be allotted to cover the costs of mobilization and training of the Philippine Army for a period of three months.

4. That the training program of the Philippine Army for an additional six to nine months be financed from the sugar excise fund, or from other funds appropriated for this purpose.

5. That 425 Reserve officers be sent to the Philippines to assist in the mobilization and training of the Philippine Army.

Within a week these recommendations had been approved by the Chief of Staff and the Secretary of War. The Secretary immediately requested President Franklin D. Roosevelt to issue the necessary executive order, already drafted and approved, for calling the military forces of the Commonwealth into active service of the United States. (App. B, Pet. for Writ, p. 10a). "Due to the situation in the Far East," Stimson wrote, "all practical steps should be taken to increase the defensive strength of the Philippines Islands." One of the most effective measures to accomplish this would be to call the Philippine Army into active service for a year's training. Such a program, Stimson estimated, would involve about 75,000 men and would cost about $32,000,000, which would be met by the

sugar excise fund. Pending appropriation by Congress, the funds to initiate the program could be met from the President's emergency fund.

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pp. 17-18. On 26 July, the day after Stimson made his recommendations, the President put the freeze into effect and issued the military order which would bring into the service of the United States the armed forces of the Philippines.

The President's military order did not mention General MacArthur by name; it was carefully worded so as to place the forces in the Philippines under a general officer of the United States Army, "to be designated by the Secretary of War from time to time." *The actual induction of Philippine Army units was to be accomplished by orders issued by that general officer.*

The War Department immediately followed up the President's action by establishing, that same day, a new command in the Philippines, with headquarters in Manila. This command, to be called U. S. Army Forces in the Far East (USAFFE), would consist of the Philippine Departmen, those military forces of the Commonwealth ordered into active service for the period of the emergency, and such other forces as might be assigned. At the same time, MacArthur was recalled to active duty, effective on 26 July, with the rank of major general, designated as the general officer referred to in the military order, and put in command of U.S. Army Forces in the Far East. (App. T, p. 53b) *With the establishment of USAFFE and the simultaneous induction of the military forces of the Commonwealth Government,* the two separate military establishments which had existed in the Philippine Islands since 1935 were placed for the first time under one command.

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p. 19. On 31 December 1937, after thirty-eight years' service, eighteen of them as a general officer, MacArthur retired from the Army with the rank of general, to become field marshal in the Philippine Army a short time later. His return to active duty on 26 July 1941 was as major general, his permanent rank before retirement. The next day action to promote him to the rank of temporary lieutenant general was initiated and approved two days later, effective 27 July.

The Organization of USAFFE

The immediate tasks facing General MacArthur were, first, to establish his headquarters and organize his command on an efficient basis; second, *to induct and train the Philippine Army;* and third, to secure the necessary supplies and reinforcements to put his forces on a war footing.

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p. 21. The largest single U. S. Army Unit in the Philippines was the Philippine Division, commanded by Maj. Gen. Jonathan M. Wainwright . . . All of the enlisted men in the division, except those in the 31st Infantry and a few military police and headquarters troops, were Philippine Scouts; the 31st was the only American infantry unit in the Islands composed entirely of Americans. In addition to this regiment, the Philippine Division contained the 45th and 57th Infantry (PS).

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pp. 21-22. The major nondivisional U. S. Army ground elements in the Philippines in July] 1941 included the Harbor Defenses of Manila and Subic Bays, a cavalry regiment, two field artillery regiments, and quartermaster, signal, and military police units.

. . . . . .

The 26th Cavalry was a Philippine Scout organization with two squadrons of three troops each.

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p. 23. ***With the establishment of USAFFE, the Philippine Department became a subordinate command.*** The headquarters staff was left largely intact, although General MacArthur designated some of its members to serve on his staff in addition to their regular duties, but the mission of the Department was narrowed until its principal task became the training and supply of the Philippine Army. In effect, it became a service command, "an administrative echelon," MacArthur explained, "analagous to a Corps Area." Planning and the tactical control of field troops, organized into task forces, were now centered in USAFFE.

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The War Department accepted this suggestion and on 23 October named MacArthur commander of the Philippine Department, relieved Grunert and ordered him back to the United States.

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p. 25. The integration of the armed forces of the Philippine Commonwealth into the service of the United States was to be gradual.

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p. 35. These reinforcements and supplies were all intended for the regular U. S. Army establishment; ***requisitions for the Philippine Army were made and considered separately. His plan of induction had hardly been completed*** when MacArthur began to request from the War Department large amounts of supplies for his Philippine troops.

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Since the Philippine Army was not limited in size by law as was the U. S. Army, MacArthur was in the unique position of being able to raise as many troops as the War Department could equip.

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p. 63. The transportation of troops and equipment, the planners realized, would be a difficult problem. There was

a large number of passenger buses on Luzon, centrally organized and operated. The 4,000 trucks on the island were of varying type, size, and condition and were mainly individually owned. *Passenger buses were to be requisitioned immediately by the Army for use as personnel carriers.*

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p. 354. On 8 February, four days after Marshall's inquiry, the War Department received a message for President Roosevelt from Manuel Quezon. In this message Quezon proposed that the United States immediately grant the Philippines their independence; that the Islands be neutralized; that American and Japanese forces be withdrawn by mutual consent; and that the Philippine Army be disbanded.

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pp. 354-355. On 9 February, one day later, President Roosevelt in a personal message to Quezon repudiated the scheme and declared that the United States Government would never agree to such a solution to the war in the Philippines. At the same time he expressed his sympathy for Quezon and the Philippine people and pledged American support *"whatever happens to the present American garrison." "So long as the flag of the United States flies on Filipino soil," Roosevelt assured Quezon, ". . . it will be defended by our own men to the death . . .* we shall not relax our efforts until the forces which are now marshalling outside the Philippine Islands return to the Philippines and drive the last remnant of the invaders from your soil."

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p. 356. *MacArthur himself had repeatedly pointed out the possibility of continuing resistance from Mindanao by means of guerrilla warfare and had already taken measures to strengthen Brig. Gen. William F. Sharp's command.*

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p. 363. The next morning [March 20] Wainwright pinned the third star on his shoulders and moved to Corregidor where Beebe turned over to him the messages from General Marshall and the President.

Wainwright's first official act was to assume command of U. S. Forces in the Philippines (USFIP), the name of his new headquarters, and to make Beebe his chief of staff. *His command, like MacArthur's, included Navy as well as Army elements.*

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p. 365. As a supreme commander of Allied forces in Australia, MacArthur was no longer eligible to command directly U. S. forces any more than he could command those of other nations. Such command would properly be exercised through a U. S. Army headquarters. Marshall therefore recommended to the President that MacArthur be informed that his plan was unsatisfactory and that Wainwright should continue in command of the Philippines. The President agreed and that day, 22 March, a conciliatory message went out to Melbourne. Refraining from specific criticism of the earlier arrangements, the message nevertheless made it clear that unless there were strenous objections Wainwright would remain in command.

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p. 499. The defense of Mindanao and the Visayas—comprising a land area half again as large as Luzon—rested with the Visayan-Mindanao Force, commanded by Brig. Gen. William F. Sharp, who had his headquarters initially on Cebu. This force was composed almost entirely of Philippine Army troops.

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p. 561. On the basis of this estimate of the situation, General Wainwright at 1000 decided to surrender, to sacrifice one day of freedom in exchange for several thousand lives. Like General King, who had surrendered Bataan

four weeks earlier, (April 9, 1942), Wainwright had made his estimate and concluded there was nothing to be gained by further resistance.

Having made his decision, Wainwright ordered Beebe to broadcast a surrender message to General Homma. (May 6, 1942—App. V, p.—)

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p. 562. It was not until midnight of the 6th, fourteen hours after the men on Corregidor had destroyed their weapons, that the Japanese agreed to a cessation of hostilities.

The surrender of scattered detachments hiding out in the mountains of north Luzon and of *General Sharp's Visayan-Mindanao Forces presented even greater difficulties. There the last of the troops did not lay down their arms until almost a month later. Only then did the Japanese admit that organized resistance in the Philippines had ended and accord to their captives the status of prisoners of war.*

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p. 566. What the Americans did not know was that the Japanese colonel was Nakayama, General Homma's senior operations officer and the man who had accepted General King's surrender. Homma had sent him to Corregidor the night before with orders to bring General Wainwright to him only if the American was ready to surrender all his troops.

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p. 569. After it was read, Homma stated through the interpreter that the surrender would not be accepted unless it concluded *all American and Philippine troops in the Islands.* To this Wainwright replied that he commanded only the harbor defense troops. "Tell him," he said to the interpreter, "that the troops in the Visayan Islands and on Mindanao are no longer under my com-

mand. They are commanded by General Sharp, who in turn is under General MacArthur's high command.

. . . . . .

Finally Homma rose, looked down at Wainwright, and said, "At the time of General King's surrender in Bataan I did not see him. Neither have I any reason to see you if you are only the commander of a unit . . . I wish only to negotiate with my equal . . . He seemed ready to leave.

Wainwright was in no position to bargain. Uppermost in his mind was the thought that the troops on Corregidor were disarmed and helpless. If Homma refused now to accept his surrender, these men faced certain death. *After a hurried conference with Beebe and Pugh, he agreed to surrender the entire Phillipine garrison.* General Homma now refused to accept the surrender. "You have denied your authority . . .," he told Wainwright, "I advise you to return to Corregidor and think the matter over. If you see fit to surrender, then surrender to the Commanding officer of the division on Corregidor. He in turn will bring you to me in Manila." With these words Homma left the meeting.

. . . . . .

p. 570. After General Homma's departure, Wainwright offered his unconditional surrender to Colonel Nakayama, who had remained behind to take the Americans back to Corregidor. He agreed also to send one of his officers to Mindanao in a Japanese plane to pursuade Sharp to surrender. "But in the back of my mind," he explained later, "was the strong hope that some way would still be found to avert the surrender of all forces."

. . . . . .

The trip across the channel had been a long and stormy one, but not long enough for Wainwright to find a way out of his dilemma. *MacArthur, he knew, expected Sharp's force to continue the fight as guerrillas and to keep alive resistance on Mindanao.* He had done his best to achieve

this aim, and *Sharp was now free to conduct guerrilla operations.* "But each time I thought of continued organized resistance on Mindanao," Wainwright recalled, "I thought, too, of the perilous position of close to 11,000 men and the wounded and nurses and civilians on Corregidor." The lives of these men and women might well be the price of Sharp's freedom.

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pp. 572-573. There was no discussion of terms. The surrender was unconditional and the document drawn up by the two men contained all the provisions Homma had insisted upon. *Wainwright agreed to surrender all forces in the Philippines, including those in the Visayas and on Mindanao,* within four days. All local commanders were to assemble their troops in designated areas and then report to the nearest Japanese commander. Nothing was to be destroyed and heavy arms and equipment were to be kept intact. "Japanese Army and Navy," read the closing paragraphs, "will not cease their operations until they recognize faithfulness in executing the above-mentioned orders. If and when such faithfulness is recognized, the commander in chief of Japanese forces in the Philippines will order 'cease fire' after taking all circumstances into consideration."

It was midnight by the time the job was finished and the surrender document signed. Wainwright was then taken, under guard and through groups of captured Americans and Filipinos, to Malinta Tunnel, which by now was full of Japanese troops. After a brief conversation with General Moore, to whom he explained the reasons for his decision, he went to the small whitewashed room he had inherited from General MacArthur. With him was his aide and outside a Japanese sentry. Exhausted and humiliated, he threw himself down on his narrow cot. He had not slept and had hardly eaten since the terrible Japanese bombardment of the 5th. But sleep would not come easily. Though

he had done all that he could, the forced surrender lay heavily on his mind. No man could be expected to endure more than he and his men had. This the President had told him in the message received only a few hours before he had gone forward to surrender. Now, in the bitterest moment of his life, he could turn to the consolation of that message from his Commander in Chief:

> In spite of all the handicaps of complete isolation, lack of food and ammunition you have given the world a shining example of patriotic fortitude and self-sacrifice.
>
> The American people ask no finer example of tenacity, resourcefulness, and steadfast courage. The calm determination of your personal leadership in a desperate situation sets a standard of duty for our soldiers throughout the world.

Promptly on the morning of 7 May Homma's intelligence officer Lt. Co. Hikaru Haba, called on General Wainwright to discuss measures required to fulfill the terms of the surrender agreement. The most important step toward carrying out these terms was for Wainwright to reassume command of the Visayan-Mindanao Force and order General Sharp to surrender. Since he could not be sure that a direct order would accomplish this purpose, Wainwright decided to send Col. Jesse T. Traywick, his operations officer, to Mindanao with a letter explaining what had happened. In it he directed General Sharp to surrender the troops under his command and to pass on to General MacArthur the text of the letter and any other instructions given him by Colonel Traywick. "However, let me re-emphasize," he warned, "that there must be on your part no thought of disregarding these instructions. Failure to fully and honestly carry them out can have only the most disastrous results."

The Japanese had still one more humiliation in store for General Wainwright. When the letter was completed,

Colonel Haba announced that the general would go to Manila that afternoon to broadcast the surrender instructions. *General Wainwright* objected strenuously, but finally gave in when he *realized that it would give Sharp an additional twenty-four hours to make his preparations and to inform General MacArthur of the situation.* At 1700, when Haba called for him, he was ready. Accompanied by five of his staff officers he left for Manila, arriving, after many delays, shortly before midnight. He was then taken directly to Radio Station KZRH where, in a voice husky with suppressed emotion, he broadcast the terms of the surrender to General Sharp, Colonel John P. Horan, and Col. Guillermo Nakar, the last of whom commanded small detachments in northern Luzon.

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p. 574. On the 14th Horan surrendered personnally and ordered his troops to assemble in preparation for surrender. But the men came in slowly, and Galbraith, with another American and a few Japanese officers, went into the mountains to try to round them up. *Only a small portion of the troops surrendered. The rest remained in hiding, to become later the nucleus of one of the guerrilla forces in northern Luzon.*

Colonel Kalakuka's mission was even less successful in securing the surrender of Nakar's force, whose actual commander was Lt. Col. Everett L. Warner . . . Nakar refused to surrender, but Warner, with a small group of American officers, followed General Wainwright's orders. *The bulk of the force remained in the mountains, and those who evaded the Japanese were organized into the 14th Infantry (PA) under Colonel Nakar, which continued in existence as a guerrilla force.*

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pp. 574-575. The story of the surrender of the Visayan-Mindanao Force is an even stranger one than that which preceded it. In the south few of the commanders were so

hard pressed as to be incapable of further resistance and none had any desire to surrender. The Japanese had landed on only three islands. On two of these, Cebu and Panay, the local commanders had pulled back to well-stocked and comparatively safe retreats in the mountains, from where they hoped to wage guerrilla warfare for an indefinite period.

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The first intimation Sharp had of Wainwright's intention to reassume command came from the latter's radio broadcast on midnight of the 7th. He immediately repeated the gists of the broadcast, which directed him in unmistakable terms to surrender, to *MacArthur* and asked for further instructions. The reply from Melbourne came promptly: *"Orders emanating from General Wainwright have no validity. If possible separate your force into small elements and initiate guerrilla operations.* You, of course, have full authority to make any decision that immediate emergency may demand."

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He [General MacArthur] could not have realized that it was the fear of what would happen to the 11,000 men on Corregidor which had forced Wainwright to accept Homma's terms.

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pp. 576-577. *General Sharp's* decision to surrender placed him in exactly the same position Wainwright had been in on 7 May. He *now had to reassume command of the officers he had released for guerrilla operations the day before.*

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p. 578. Copies of the correspondence were sent to the various units on Cebu, and the men were told that they could surrender individually if they wished to do so. *Only two Filipinos and two Americans took advantage of this*

opportunity. General Chynoweth then made plans to move to Panay to join forces with Colonel Christie.

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p. 579. *Of all the island commanders none was better prepared for guerrilla operations than the Panay commander, Colonel Christie.*

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pp. 580-581. That night Colonel Christie informed General Sharp that he had talked with Thayer and had decided "to comply faithfully with your orders for the surrender of my division." Two days later he marched his troops to the Japanese lines. *By that time approximately 90 percent of his men had vanished into the hills or gone back to their homes.*

On Leyte and Samar, where there were no Japanese, Colonel Cornell also refused to accept General Sharp's message of 10 May directing the surrender, on the ground that it had been seen in clear text. *He continued with his plans to break up his force of about 2,500 men to carry on guerrilla operations.* About 20 May General Sharp's courier arrived with written instructions for the surrender, and Colonel Cornell issued orders to his troops to comply. The Japanese arrived in Tacloban on 24 May and the surrender was effected two days later. *Only 11 American officers, 40 Philippine officers, and 20 Philippine enlisted men surrendered; the rest disappeared into the hills.*

On Negros, where Colonel Hilsman commanded, trouble of a different sort developed.

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p. 582. The date set for the surrender came and passed with no sign that the Filipinos would obey orders. Twice Hilsman persuaded Colonel Ota to grant an extension of time. When the second extension expired on 3 June, the Japanese agreed to accept Hilsman's surrender with the troops he had by then persuaded to come down out of the

hills, *about 95 percent of one battalion and 30 percent of two others. Two battalions never surrendered at all.*

During the next week the troops on outlying islands submitted to the Japanese, and by *9 June* all forces in the Philippines, with the exception of certain small detachments in isolated areas, had surrendered. On that day General Wainwright was notified that all organized resistance had ended. *"Your high command," the Japanese told him then, "ceases and you are now a prisoner of war."* (Italics supplied).

APPENDIX S (Cont'd.)

U.S. ARMY IN WORLD WAR II
THE WAR IN THE PACIFIC
THE APPROACH TO THE PHILIPPINES

BY

ROBERT ROSS SMITH

OFFICE OF THE CHIEF OF MILITARY HISTORY
DEPARTMENT OF THE ARMY
WASHINGTON, D. C., 1953

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p. 14. Allied combat operations were conducted through four operational headquarters subordinate to General MacArthur—the Allied Air Forces, the Allied Land Forces, the Allied Naval Forces, and Alamo Force.

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p. 85. Initially, they [the Japanese] intended only to knock out the U. S. Pacific Fleet, to seize Malaya and the Netherlands East Indies, to occupy the Philippine Islands, and to gain control over a defensive perimeter reaching southwestward from the Kuriles (north of Japan) through Wake Island, the Marianas, the Carolines, and the Marshalls, to Rabaul. After attaining these objectives, the

Japanese expected ultimately to obtain from the United States and Britain a negotiated peace which would leave Japan in possession of a "Greater East Asia Co-Prosperity Sphere."

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p. 429. His [General MacArthur's] planners were reported to have thought it possible that if sufficient carrier support and assault shipping could be made available from Central Pacific sources, the target date for the advance to the Philippines might be greatly accelerated by jumping from Hollandia to the Wakde-Sarmi area, thence to the western Vogelkop, and then directly to Mindanao.

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p. 450.

General MacArthur's Planning

... First, an air base between the Vogelkop and Mindanao would be necessary to provide left (south) flank protection against whatever air power the Japanese could bring to bear from Ambon, Ceram, and the Celebes against Allied forces advancing to Mindanao. Second, the Halmahera air base would be needed to provide land-based air support for the invasion of Mindanao which, in mid-June, General MacArthur tentatively rescheduled to begin on 25 October. (1944)

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pp. 451-452. While General Headquarters, Southwest Pacific Area, was selecting Morotai as the target in the Halmahera region, the Joint Chiefs of Staff requested General MacArthur and Admiral Nimitz to submit comments on the possibility of accelerating the Pacific war by moving forward all current target dates or bypassing selected objectives (including Halmahera, the western Carolines, and the Philippines) in favor of direct jumps to either Formosa or the Japanese home islands.

Neither General MacArthur nor Admiral Nimitz was willing or able to give approval to such proposals. General MacArthur, who felt that bypassing the Philippines would be tantamount to abandoning those islands, believed that a move to Formosa would be impossible until land-based air support was available in the northern Philippines, and he then considered a direct move to Japan impracticable. Admiral Nimitz, like General MacArthur, pointed out that logistic and tactical problems made it impossible to assure meeting current target dates for scheduled operations, and he felt that Southwest Pacific air forces would have to be firmly established in Mindanao before any attempt could be made to move to Formosa.

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p. 454.

Strategic Air Support

. . . The planners kept in mind that the major objective of the two operations was very broad in scope—to secure control over the eastern approaches to the Luzon-Formosa-China coast area.

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pp. 471-472.

Logistics of the Palau Operation

Approximately 49,500 troops were assigned to the III Amphibious Corps to execute the occupation and development of the Palaus during the assault phase of operations on those islands. These troops were divided between services as follows:

U. S. Army	19,800
U. S. Marine Corps	24,300
U. S. Navy	4,800

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p. 575. Nevertheless, with the information available to them in the summer and early fall of 1944, Admiral Nimitz, General MacArthur, and the Joint Chiefs of Staff all

believed that only by securing the Palaus could the Allies dominate Japanese bases in the western Pacific and insure the safety of forces moving toward the Philippines.

APPENDIX S (Cont'd.)

U. S. ARMY IN WORLD WAR II
THE WAR IN THE PACIFIC
LEYTE: THE RETURN TO THE PHILIPPINES

BY

M. HAMLIN CANNON

OFFICE OF THE CHIEF OF MILITARY HISTORY
DEPARTMENT OF THE ARMY
WASHINGTON, D. C., 1954

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p. 1. "It is with the deepest regret that I must inform you that conditions over which I have no control have necessitated the surrender of troops under my command." With this message of 20 May 1942, from Lt. Col. Theodore M. Cornell, U. S. Army, to Bernardo Torres, Governor of Leyte, the control which the United States had held over the island since 1898 came to an end.

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pp. 1-2. The Pacific Theater was divided into two command areas—the Southwest Pacific Area, with General Douglas MacArthur as Supreme Commander (he referred to himself, however, as Commander in Chief), and the Pacific Ocean Area (which included the Central Pacific), with Admiral Chester W. Nimitz as Commander in Chief.

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pp. 14-15.

THE RESISTANCE MOVEMENT ON LEYTE

The Organizing of Guerrilla Bands

A period of uncertainty and confusion followed the surrender of the American and Filipino forces in the Philip-

pines in the spring of 1942. Civilians and members of the armed forces who did not surrender to the Japanese Army fled into the hills. Some went because they wanted to continue the fight, others because they felt that the chaotic conditions on the Islands would afford unequaled opportunities for looting and pillaging.

Once in the hills, the men formed themselves into guerrilla bands.[5] At first all of the bands, because of their lack of money and supplies, freely raided farms and storehouses for food and equipment whenever they had the opportunity. Moreover, there were real bandit groups who frequently and wantonly raped the countryside. For a time all of the groups were discredited by the people. *Gradually, however, strong men emerged who formed the guerrilla bands into semi-military organizations.* The leader of each band, who was generally an ex-member of the armed forces, gave himself a "bamboo commission," usually considerably higher than the one he had hitherto possessed.

The following oath of allegiance taken by the members of one of the bands is probably typical:

> I do solemnly swear that I shall obey orders from my superior officer; that I shall fight the enemy of the Government of the Commonwealth of the Philippines and the United States of America whosoever and wherever he maybe [sic] in the territory of the Philippines; that I shall never allow myself nor any arm or ammunition to be caught by the enemy; that I shall

[5] Unless otherwise stated, material on the guerrillas is based upon the Guerrilla Papers, a collection of disorganized, miscellaneous records by and about the guerrillas in the Philippine Islands. It is located in the Documents Files Section, G-2, Department of the Army.

The records of the Leyte guerrillas are incomplete, inadequate, and controversial. Some of the guerrilla bands had no records, and all that is known of others is from violently prejudiced sources. Consequently, the full story of the guerrillas can probably never be told.

never turn traitor to my country nor the United States of America; and muchless [sic] reveal to the enemy any secret of the Army to which I honorably belong; that I shall never abandon a wounded brother in arms; that I join the United Forces in the Philippines without personal or party interest, but with the determination to sacrifice myself and all that is mine for FREEDOM and DEMOCRACY; that I shall protect the lives and property of all loyal Filipinos everywhere.

I make this LOYALTY OATH without mental reservation or purpose of evasion.

SO HELP ME GOD.

* * * * * *

p. 16. Official recognition from General MacArthur's headquarters was slow in reaching the guerrillas on Leyte, a fact that brought about misunderstandings. General MacArthur had early established contact with Col. Macario Peralta on Panay and Col. Wendell Fertig on Mindanao. *In the middle of February 1943 MacArthur sent Lt. Comdr. Charles Parsons, USNR, to the Islands by submarine.* Before his departure, General Headquarters had established the policies to be followed. The prewar military districts, as of December 1940, were to be revived. *Since General MacArthur had received information that Colonel Fertig had successfully created an effective guerrilla organization on Mindanao and Colonel Peralta one on Panay, he recognized them as commanders of the 10th and 6th Military Districts, respectively.* Radio communication from MacArthur's headquarters informed Peralta and Fertig of the appointments on 21 February 1943. Commander Parsons also carried formal letters, dated 13 February 1943, making these appointments.

Parsons safely reached the Philippines in early March and established friendly relations with Colonel Fertig. While on Mindanao he made several local trips, one to southern Leyte where he heard of Colonel Kangleon who had escaped from the Butuan prison camp and returned to

his home. *Parsons visited Kangleon* with the promise that he would be made commander of the 9th Military District (Leyte and Samar), *and succeeded in persuading him to join the guerrilla movement on Leyte.*

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p. 17. *On 21 October 1943 General MacArthur recognized Colonel Kangleon as the Leyte Area Commander,* and in a letter accompanying the appointment he told Kangleon what he expected of him. "I desire that you establish and maintain direct communication with this headquarters at your earliest opportunity and thereafter you keep me informed of major developments involving enemy movement, dispositions and other activity within your area and observation."

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pp. 18-19. Nevertheless, the Japanese also knew that the guerrillas had established communication with General MacArthur in Australia and that they were sending important information to General Headquarters. *This service the Japanese were unable to cut off.*

Liaison Between Leyte and Australia

After his arrival in Australia in March 1942, General MacArthur had maintained radio contact with Corregidor until 6 May, but because of conditions in the Philippines radio communication with other parts of the Islands was all but impossible. Before its fall, Corregidor maintained radio contact with military commanders on the other islands. Afterward, a few men escaped and made their way to Australia. *The sum of information they brought was not large, but it included the welcome news that guerrilla units were in existence all over the Islands.* In the summer of 1942 General Headquarters began to receive messages from the guerrillas in the Philippines, though at first General MacArthur was not sure that the messages actually came from the guerrillas.

In August 1942 MacArthur decided to get in touch with the members of the resistance movement in the Philippines, and for this purpose he enlisted the services of Maj. Jesus Antonio Villamor, who had escaped from the Islands and who volunteered to return. From August to December methods were devised and plans were made for sending an intelligence party to the Philippines. On 27 December 1942 Major Villamor received orders to return secretly to the Islands by submarine with three other Filipino officers and two enlisted men. They were instructed to establish an intelligence and secret service network throughout the Philippines; develop a chain of communications within the Philippines and to Australia, together with an escape route from the Islands for the evacuation of important personages; build up an organization for subversive activities, propaganda, limited resistance, and sabotage; and make an intelligence survey to obtain information on Japanese political, military, and civil intentions as well as the strength and disposition of Japanese military, naval, and air forces.

Armed with these instructions, Major Villamor returned to the Philippine Islands. Slowly but carefully, from December 1942 to November 1943, he established an intelligence network that covered Luzon and the Visayan Islands.

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p. 20. *The guerrillas of the Philippine Islands made far-reaching contributions to the war effort.* They were an extremely valuable source of intelligence; their activities forced the Japanese to retain in the Philippines comparatively large forces which would otherwise have been sent south; it is estimated that they killed from eight thousand to ten thousand Japanese troops; and, finally, they bolstered the morale, spirit, and loyalty of the Filipino people. They kept alive the hope and belief that the forces of the United States would return and redeem the Islands.

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p. 90. There were two American fleets in Philippine waters—the Seventh Fleet under Admiral Kinkaid, whose superior was General MacArthur, and the Third Fleet under Admiral Halsey, whose superior was Admiral Nimitz.

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p. 152.

Restoration of Civil Government.

The guard of honor, consisting of 1st Lt. John Gregory and thirty enlisted men of the 5th Cavalry, arrived at Tacloban later on 23 October. President Osmena of the Philippine Commonwealth was also present, having come ashore for the occasion. A simple but impressive ceremony was held in front of the municipal building of Tacloban, though the interior of the edifice was a shambles of broken furniture and scattered papers. A guard of honor of "dirty and tired but efficient-looking soldiers" was drawn up in front of the government building. *General MacArthur broadcast an address announcing the establishment of the Philippine Civil Government with President Osmena as its head.* Lt. Gen. Richard K. Sutherland then read the official proclamation. President Osmena spoke appreciatively of American support and of the determination of the Filipinos to expel the enemy. "To the Color" was sounded on the bugle, and the national flags of the United States and the Philippines were simultaneously hoisted on the sides of the building. *Colonel Kangleon of the guerrilla forces was then decorated with the Distinguished Service Cross.*

Few Filipinos except representatives of the local government were present for the ceremony. Apparently the inhabitants had not heard of it, or did not know that they were permitted to attend. Information quickly spread, however, that the civil government had assumed control, and as General MacArthur and his party left town the civil population cheered them.

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p. 179

Capture of Carigara

By 31 October (1944) it became evident to the Americans that there was unusual activity on the part of the Japanese, who were apparently building strong defensive positions around Carigara and pouring reinforcements into the town. Statements by reconnaissance parties and reports from guerrillas led to the belief that 2,000 to 3,000 Japanese were in the town and its environs.

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pp. 198-199.

Civil Affairs

Although the United States Government had interested itself in the civil affairs of the Philippines as early as 13 January 1944, it was not until 10 November, after the Leyte Campaign had been launched, that General MacArthur received his first directive on civil affairs. Between the two dates strong disagreements developed between the War and Interior Departments as to who should administer civil affairs in the Islands. The Interior Department insisted that a civil representative of the High Commissioner of the Philippines should accompany the assault troops, and General MacArthur was equally insistent that he should not. The President finally resolved the question in favor of MacArthur. Lacking a directive from the Joint Chiefs of Staff, General MacArthur devised his own policy for civil affairs during the reoccupation of the Philippines.

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p. 199. During the combat stage General Krueger, the senior tactical commander, was to be responsible for such civil administration and relief as would be possible under the existing tactical situation. General MacArthur would delegate the administration of civil affairs and relief in the liberated areas as promptly as possible to the authorized representatives of the Commonwealth Government.

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p. 201. The Army disarmed all Filipinos except guerrillas and enforced security regulations, which prohibited civilians from appearing on the streets after dark.

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p. 204.

Recruitment of Filipinos

"Hundreds of self appointed guerrillas whose only claim to participation in the guerrilla organization was a recently realized ambition to be of service to their country and to their allies" confronted the assault forces on the beachheads. These individuals caused endless confusion, since it was practically impossible for the Americans to distinguish between the genuine guerrilla and his opportunistic counterfeit. After the first few days, however, the Army made contact with guerrilla headquarters and established liaison with the bona fide guerrillas.

General Krueger made the guerrillas a part of his armed forces, and they became a source of additional strength to the Sixth Army. These men frequently operated and patrolled in enemy-held territory and brought the Americans valuable information on Japanese movements and dispositions; the unit commanders of Sixth Army, however, tended to discount reports from such sources with regard to the size of Japanese forces. The guerrillas also guarded supply dumps and depots, bridges, and other installations in the rear areas.

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p. 228. The battalion had been without food since the morning before. At 0910 Colonel Dahlen ordered Colonel Clifford not to move on to Agahang, which was about 3,800 yards northwest of Limon, until he received rations. The rations were not forthcoming but at 1400 Dahlen told Clifford to obtain the promised rations at Agahang, to which the battalion then proceeded. No supplies were received, but Filipinos furnished the unit with bananas,

cooked rice, boiled potatoes, and a few chickens. A night perimeter was set up.

At 0850 on the following day Colonel Clifford's men received their first airdrop of rations. Ten minutes later the commanding officer of the 1st Battalion of the guerrilla 96th Infantry made contact with Colonel Clifford and gave him a résumé of the enemy situation. (*The guerrillas rendered invaluable aid to the 1st Battalion, 34th Infantry, throughout the Kilay Ridge* episode by furnishing intelligence and protecting the rear of the unit.)

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p. 228. At 0855 on 13 November a column of Filipino men, women, and children entered the perimeter and brought approximately thirty-five boxes of rations from Consuegra.

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p. 250. The sources of information on the Japanese were as follows: ground and aerial reconnaissance, Filipino civilians, guerrillas, captured documents, and prisoners. Air observation was of limited value because of the Japanese ability at camouflage and because the inclement weather prevented aerial observation of many areas. The tendency of the Filipinos to say "yes" to everything was also a handicap. In general, the guerrilla reports were more accurate than those of civilians. Considerable information was obtained from patrols, which were especially valuable for on-the-spot intelligence.

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p. 254. As the troops of the 2d Battalion, 32d Infantry, moved over the mountains to Baybay, guerrillas informed them that about three hundred Japanese soldiers were pushing south toward the Abuyog-Baybay road. These enemy troops were "six marauding units" of the company which had been sent south to make contact with the American forces and contain them until the *26th Division* could

arrive. Company E set up an ambush, killed many of the Japanese, and forced the others to disperse.

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pp. 368-369: *In the plan for the defeat of Japan the objective sought in reconquering the Philippines was not only to liberate the Filipinos but also to cut off the Japanese from the rich empire that they had acquired in the Netherlands Indies, and at the same time to establish a base for the final assault on the enemy's homeland.* As early as 1942 Allied submarines had begun to gnaw at the lifeline between Japan and its new empire, rich in rubber, tin, rice, and, above all, in oil, without which Japan could not remain in the war. By the fall of 1944 the submarines had virtually cut this lifeline, which ran past the Philippines. The loss of the Philippines to the Allies would finally sever it. (Italics supplied).

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APPENDIX T

FROM: WAR DEPARTMENT

BUREAU: SECRETARY, GENERAL STAFF

GENERAL DOUGLAS MACARTHUR JULY 26, 1941

EFFECTIVE THIS DATE THERE IS HEREBY CONSTITUTED A COMMAND DESIGNATED AS THE UNITED STATES ARMY FORCES IN THE FAR EAST stop THIS COMMAND WILL INCLUDE THE PHILIPPINE DEPARTMENT comma FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES CALLED AND ORDERED INTO THE SERVICE OF THE ARMED FORCES OF THE UNITED STATES FOR THE PERIOD OF THE EXISTING EMERGENCY comma AND SUCH OTHER FORCES AS MAY BE ASSIGNED TO IT stop HEADQUARTERS UNITED STATES ARMY FORCES IN THE FAR EAST WILL BE ESTABLISHED IN MANILA PHILIPPINE ISLANDS stop YOU ARE HEREBY DESIGNATED AS THE COMMANDING GENERAL UNITED STATES ARMY FORCES IN THE FAR EAST stop YOU ARE ALSO DESIGNATED AS THE GENERAL OFFICER UNITED STATES ARMY REFERRED TO IN A MILITARY ORDER CALLING INTO THE SERVICE OF THE ARMED FORCES OF THE UNITED STATES THE ORGANIZED MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES DATED JULY 26, 1941 stop ORDERS CALLING YOU TO ACTIVE DUTY ARE BEING ISSUED EFFECTIVE JULY 26, 1941 stop REPORT ASSUMPTION OF COMMAND BY RADIO end

JULY 26, 1941

G. C. MARSHALL

I hereby certify that this message is on official business and necessary in the public service

(signed) ORLANDO WARD
Orlando Ward
Colonel, General Staff
Secretary, General Staff

My dear MacArthur:

In your letter of May 29 you state that the Philippine Army is to be absorbed by the United States Army in the near future, and consequently, that you are closing out your Military Mission. At the present time, War Department plans are not so far reaching. Contingent upon the appropriation of sugar and excise tax funds, Grunert has recommended that about 75,000 troops of the Philippine Army engage in a period of training of from three to

nine months, in order to prepare them for the defense of the Philippines. While the decision as to the termination of the Military Mission is yours, the War Department plans do not contemplate taking over all responsibilities of your Mission in the near future.

Both the Secretary of War and I are much concerned about the situation in the Far East. During one of our discussions about three months ago, it was decided that your outstanding qualifications and vast experience in the Philippines make you the logical selection as the Army Commander in the Far East should the situation approach a crisis. The Secretary has delayed recommending your appointment as he does not feel the time has arrived for such action. However, he has authorized me to tell you that, at the proper time, he will recommend to the President that you be so appointed. It is my impression that the President will approve his recommendation.

This letter is also an acknowledgment of your letters to the President and to the Secretary of War. Please keep its contents confidential for the present.

Faithfully yours,

(Sgd) G. C. MARSHALL
Chief of Staff.

General Douglas MacArthur,
1 Calle Victoria,
Manila, P. I.

APPENDIX U

HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST
MANILA, P. I.

General Orders
No. 15

6 October, 1941.

1. Pursuant to the provisions of the Proclamation of the President of the United States, dated July 26, 1941, the First Regiment, Philippine Constabulary, is hereby called into the service of the armed forces of the United States in the Philippines, effective at 12:01 A.M., 15 October, 1941, for the period of the existing emergency.

The acceptance ceremony will be performed by a United States Army Officer designated by the Philippine Department at Camp Rafael Crame, Quezon City, P. I.

2. The above unit, upon acceptance, is assigned to command of the Commanding General, Philippine Department.

By Command of Lieutenant General MacArthur:

R. K. SUTHERLAND,
Brigadier General, GSC,
Chief of Staff.

APPENDIX V

Surrender Message of General Wainwright Broadcast by Radio in the Philippines on 6 May 1942

"Anyone receiving this message please transmit it to the commander in chief of the Imperial Japanese Forces on Luzon.

"'For military reasons which General Wainwright considers sufficient to put a stop to further sacrifice of human life, the commanding general will surrender to Your Excellency today the four fortified islands at the entrance to Manila Bay together with all military and naval personnel and all existing stores and equpiment.

"At twelve noon, local Daylight Savings Time, 6 May 1942, a white flag will be displayed in a prominent position on Corregidor, at which time all firing from the harbor forts will cease unless a landing by Japanese troops in force is attempted without flags of truce, in which case they will be taken under fire.

"If all of your firing and aerial bombardment has ceased at twelve noon local time the commanding general will send two staff officers by boat, flying a white flag, to the Cabcaben dock to meet a Japanese staff officer, whom the commanding general requests that Your Excellency have there, empowered to name the time and place for the commanding general to meet Your Excellency in order that he may make the formal surrender and to arrange all details.

"Upon the return of his staff officers the commanding general will proceed by boat, accompanied by some of his staff, to such place as may be designated by Your Excellency. The commanding general's launch will fly a white flag and his party will consist of five or six persons. He requests that motor transportation meet his party at the landing point designated by you."

Extracted from General Wainwright's journal, written by him in 1946 which is in the official custody of the Department of the Army and which contains data gathered by him from reports, notes and extracts and conferences with other officers.

Text of General Wainwright's Letter to General William F. Sharp, Jr., Dated 7 May 1942, Subject: Surrender

"To put a stop to further useless sacrifice of human life on the Fortified Islands, yesterday I tendered to Lieutenant General Homma, the commander in chief of the Imperial Japanese Forces in the Philippines, the surrender of the four harbor forts in Manila Bay.

"General Homma declined to accept my surrender unless it included the forces under your command. It became apparent that the garrisons of these said forts would be eventually destroyed by aerial and artillery bombardment and by infantry supported by tanks, which have overwhelmed Corregidor.

"After leaving General Homma with no agreement between us I decided to accept in the name of humanity his proposal and tendered at midnight, night 6-7 May 1942, to the senior Japanese officer on Corregidor, the formal surrender of all American and Philippine Army troops in the Philippine Islands. You will therefore be guided accordingly, and will repeat will surrender all troops under your command both in the Visayan Islands and Mindanao to the proper Japanese Officer. This decision on my part, you will realize, was forced upon me by means beyond my control.

"Colonel Jesse T. Traywick, Jr., G.S.C., my assistant chief of staff, G-3, who will deliver this letter to you, is fully empowered to act for me. You are hereby ordered by me as the senior American Army Officer in the Philippine Islands to scrupulously carry out the provisions of this letter, as well as such additional instructions as this staff officer may give you in my name.

"You will repeat the complete text of this letter, and of such other instructions as Colonel Traywick may give you, by radio to General MacArthur. However, let me emphasize that there must be on your part no thought of disregarding these instructions. Failure to fully and honestly carry them out can have only the most disastrous results. Signed, Lieutenant General Johnathan M. Wainwright."

Extracted from General Wainwright's journal, written by him in 1946 which is in the official custody of the Department of the Army and which contains data gathered by

him from reports, notes and extracts and conferences with other officers.

APPENDIX W

Rules of Land Warfare

War Department Field Manual

FM 27-10 1 October 1940

Requisitions

335. *Requisitions.*—Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible (*H.R., art. 52*).

336. *What may be requisitioned.*—Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food forage, clothing, tobacco, printing presses, type, leather, cloth, etc. Billeting of troops for quarters and subsistence is also authorized.

337. *Method of requisitioning.*—Requisitions must be made under the authority of the commander in the locality. No prescribed method is fixed, but if practicable requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direct by detachments if local authorities fail for any reason. Billeting may be resorted to if deemed advisable.

338. *The amount taken.*—The expression "needs of the army" was adopted rather than "necessities of the war" as more favorable to the inhabitants, but the commander is not thereby limited to the absolute needs of the troops actually present. The object was to avoid reducing the population to starvation.

339. *Fixing prices.*—The prices of articles requisitioned will be fixed by agreement if possible, otherwise by military authority. The prices of commodities on sale may also be regulated and limits placed on the hours and places of trading. All authorities agree that it is good policy to pay cash if possible and to take up receipts as soon as possible.

340. *Method of enforcing.*—If cash is paid, coercion will seldom be necessary. The coercive measures adopted will be limited to the amount and kind necessary to secure the articles requisitioned.

APPENDIX X

Executive Order No. 21

DECLARING TO BE ON ACTIVE SERVICE IN THE PHILIPPINE ARMY ALL PERSONS NOW ACTIVELY SERVING IN RECOGNIZED MILITARY FORCES IN THE PHILIPPINES

WHEREAS, many civilians residing in the Philippines of Filipino, American or other foreign citizenships, and Officers and Enlisted Men of the Philippine Army, of the armed forces of the United States and of Allied nations, have continued armed resistance against the Imperial Japanese Government since the sixth of May 1942;

WHEREAS, this action has written in blood an epic of courage, devotion and loyalty to the Government and the people of the Philippines;

WHEREAS, these military forces have contributed in a large measure to the Allied military effort and to the

liberation of the Filipino people from the yolk [sic] of the Japanese invader;

WHEREAS, it is the desire of the Government of the Philpines to recognize this allegiance;

NOW, THEREFORE, I, SERGIO OSMENA, President of the Philippines, by virtue of the authority vested in me by the Emergency Powers Law, Section 22*a* and Section 27 of Commonwealth Act Numbered One notwithstanding, do hereby ordain and promulgate the following:

1. All persons, of any nationality or citizenship, who are actively serving in recognized military forces in the Philippines, are hereby considered to be on active service in the Philippine Army.

2. The temporary grades of Enlisted Men, enlisted or promoted in the field by Commanders of recognized military forces or by their delegated authority, are hereby confirmed.

3. The temporary ranks of all officers, appointed or promoted in the field prior to this date by Commanders of recognized military forces, are hereby confirmed.

4. The date of entry into active service in the Philippine Army will be that of joining a recognized military force.

5. The effective date of rank for commissioned Officers and Enlisted Men will be the date on which they were appointed, designated or recognized by the Commanders of recognized military forces.

6. A recognized military force, as used herein, is defined as a force under a commander who has been appointed, designated or recognized by the Commander-in-Chief Southwest Pacific Area.

Done at the seat of Government in the Field, this 28th day of October, in the year of our Lord, Nineteen Hundred

and Forty-Four, and of the Commonwealth of the Philippines, the Ninth.

/t/ SERGIO OSMENA
President of the Philippines.

By the President:

ARTURO B. ROTOR
Secretary to the President

APPENDIX Y

HEADQUARTERS SIXTH ARMY

APO 442

AG 384 A-2 — 26 March 1945

Subject: Recognized Guerrilla Units.
To: See Distribution

1. a. The guerrilla units listed on attached list have been recognized by the Commander-in-Chief as authorized elements of USAFFE. Under the Provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 28 October 1944, the status of members of these units, who have served while the unit was in direct support of Sixth Army combat operations, is that of officers and enlisted men of the Philippine Army.

b. At such times as additional units are recognized, you will be forwarded supplementary lists.

2. It is desired that you notify those units on the attached list that are operating under your control that they have been recognized. The rosters of such units, as required by paragraph 3, letter this headquarters, AG 384 A-2, Subject: "Recognition of Guerrilla Units", dated 25 February 1945 which have not yet been submitted will be furnished without delay.

3. It has been noted from recommendations for recognition submitted by US Army organizations that frequently

individuals, or groups of 2 to 5 persons, from a large guerrilla unit are the only personnel of such unit serving with the US Army organization. In such cases the unit has not been recommended for recognition. For the payment of such individuals for their services, it is desired that they be included on the payroll of a recognized guerrilla unit serving with your command.

By Command of Lieutenant General Krueger:

W. A. MIXTACKI,
Major, A. G. D.
Asst. Adj. Gen.

1 Incl:

List of recognized guerrilla units.

Distribution:

"A" and Corps, Divisions
USAFIP, North Luzon.

HEADQUARTERS

UNITED STATES ARMY FORCES IN THE FAR EAST

APO 501

FEGC 370.64 IJN/jt
8 May 1945

Subject: Recognition of Guerrilla Units.

To: Commanding General, Sixth Army, APO 442.

1. The following guerrilla units are recognized by the Commander-in-Chief, Southwest Pacific Area as authorized elements of this command effective as of the date specified:

a. *Guerrilla Units under the overall command of Capt George S. Miller*

• • • • • •

b. *Guerrilla Units under the overall command of Col Viudez*

. . . . . .

c. *Guerrilla Units under the overall command of Maj Ramsey*

. . . . . .

2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of members of these units is that of officers and enlisted men of the Philippine Army.

3. It is desired that a roster of the personnel of each of these units be fowarded at the earliest practicable date.

4. It is further desired that payment of these units be facilitated by finance officers of the Philippine Army, attached to your command.

By command of General MacArthur:

[stamped] JAMES A. CALLENDER
Capt. A. G. D.
Asst. Adj. General

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

CM/jb
AG 370.64 (23 Aug 45) PA — APO 500
23 August 1945

Subject: Recognition of Guerrilla Units.

To: Commanding General, United States Army Forces, Western Pacific, APO 707
Chief of Staff, Philippine Army, APO 501

1. Guerrilla forces as indicated below were recognized by the Commander-in-Chief, SWPA, on dates shown:

Commander	Area	Date
Col. Wendell W. Fertig	10th Mil. Dist.	13 Feb. 1943
Col. Macario Peralta	6th Mil. Dist.	13 Feb. 1943
Col. Ruperto K. Kangleon	Leyte Command	21 Oct. 1943

Commander	Area	Date
Col. Alejandro Suarez	Sulu Command	11 Feb. 1944
Lt. Col. Salvador Abcede	*7th Mil. Dist.*	*8 Jul. 1943*
Lt. Col. James Cushing	Cebu Command	12 Feb. 1944
Lt. Col. Charles W. Smith	Samar Command	4 Oct. 1944
Maj. Ismael P. Ingeniero	Echol Command	21 Oct. 1943
Maj. Jose M. Ruffy	Mindoro	15 Dec. 1944
Maj. Pablo Muyco	Palawan	23 Feb. 1945
Capt. Manuel Donato	Masbate	3 Apr. 1945
Capt. Sofronio Untalan	Marinduque	15 Dec. 1944

2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of units under commanders listed above is that of members of the Philippine Army.

By command of General MacArthur:

D. W. Dooley,
Capt, AGD,
Asst, AG,

Note: Revision of 12 August 1947, consisting of several pages relating to various units of the 7th Military District, Island of Negros, fixes a revised recognition date of 17 November 1942.

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

APO 500

AG 323.361 (1 Nov 45) DCSO 1 November 1945

Subject: Matters Pertaining to the Philippine Army.
To: Commanding General, United States Army Forces, Western Pacific, APO 707

1. Effective 5 November 1945 you are charged with the responsibility for, and authorized to act on, all United States Army matters pertaining to the Philippine Army and the Philippine Commonwealth Government. The following tasks are included among these matters:

a. Execution of Philippine Army demobilization plans as set forth in the revised Plan for Demobilization of Philippine Army, attached.

b. Preparation and conclusion of arrangements for the releases of units to be turned over to the Philippine Government on 30 June 1946. In this connection you will be guided by policies set forth in the revised Plan for Post-War Philippine Army, attached.

c. Arrangements of details in connection with the enlistment of Philippine Army personnel in the Philippine Scouts under the 50,000 Scout project now being developed by the War Department.

d. *Recognition of additional guerrilla units* or individuals for the purpose of entitling them to benefits for services rendered.

e. Handling of finance matters pertaining to the Philippine Army. In this connection, authority is being delegated to you by separate communication to approve the allocation of funds from United States appropriations for use by the Philippine Army.

2. In order to assist you in the accomplishment of the above tasks, orders will be issued without delay to transfer to your command such *personnel of the Philippine Army Section, United States Army Forces, Pacific* as you may desire, and the United States Army Training Group.

3. Action is also being initiated to transfer to you authority to make final determinations under the Missing Persons Act, in case involving personnel of the Philippine Army. When this action is completed, it is contemplated that the Recovered Personnel Basic: Ltr to CG AFWESPAC subj: "Matters pertaining to the Philippine Army." dtd 1 November 1945, file AG 323.361 (1 Nov 45) DCSO.

Division, Adjutant General Section this headquarters and the Recovered Personnel Detachment, United States Army Forces, Pacific will be transfered to your command.

By Command of General MacArthur:

B. M. FITCH
Brigadier General, U. S. Army,
Adjutant General

2 Incls:
Incl. 1-Revised Plan for Demobilization of Philippine Army
Incl 2-Revised Plan for Post-War Philippine Army.
cc:
Chief of Staff,
Philippine Army Section.
G-1
G-3
PA Section
Fiscal Director
AG-P
C/S PA Section
AG Recruiting
OCSO—Tokyo

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

APO 707
16 OCT 1946

GSCPG 091 PI

SUBJECT: Recognition of Guerrilla Unit

To: Chief of Staff, Philippine Army, APO 75

"1. The unit listed below is recognized by the Commanding General, United States Army Forces, Western Pacific,

as having been an authorized element of the Philippine Army, *inducted into the Armed Forces of the United States from 9 January 1945 to 2 September 1945:*

Miguel Ver Regiment, Composite Unit
Hunters or ROTC Guerrillas

	Strength
Officers	165
Enlisted Men	3,595
	3,760

"2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of the members of this unit, during the period above specified, was that of officers and enlisted men of the Philippine Army.

"3. Under the provisions of Executive Order No. 68, by the President of the Commonwealth of the Philippines, dated 26 September 1945, all officers and enlisted men of this unit, other than those who are members of the Regular Force or the Reserve Force of the Philippine Army, will be considered as having been discharged from the Philippine Army as of 2 September 1945." (Italics supplied.)

"FOR THE COMMANDING GENERAL:

"THOMAS J. BROWN
CWO, USA
Asst Adj Gen"

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GENERAL ORDERS
No. 168

APO 707
25 June 1946

RELEASE OF THE MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES

Effective 2400 hours, 30 June 1946, the military forces of the Government of the Commonwealth of the Philippines, now assigned or attached to United States Army Forces in the Western Pacific, are released from such assignments and attachments, from service in the armed forces of the United States of America, and revert to full control of the Government of the Commonwealth of the Philippines. (GSCOT 323.361)

BY COMMAND OF LIEUTENANT GENERAL STYER:

J. G. CHRISTIANSEN
Major General, USA
Deputy Commander and
Chief of Staff

OFFICIAL:
s/ J. J. Gerhardt
t/ J. J. GERHARDT
Colonel, AGD
Adjutant General

DISTRIBUTION:
AE

APPENDIX Z

USAFFE Regulations
No. 1-75

1-75
USAFFE
A.P.O. 501
7 April 1945

Claims Service, USAFFE

1. *Designation.* There is established in this theater a claims service designated as "CLAIMS SERVICE, USAFFE".

2. *Components.* Claims Service, USAFFE, will consist of:

a. A Chief of Claims, functioning through a central headquarters and such branch offices as may be necessary.

b. Claims Commissions, composed of one or more officers with such authority as may be delegated to them in the appointing order.

c. Claims Investigating Service.

3. *Administrative Responsibility.* a. The Chief of Claims is charged with:

(1) Supervision and direction of the Claims Commissions of the Claims Investigating Service.

(2) Supervision and coordination of the investigation and processing of claims in the Southwest Pacific Area of the following nature:

(a) Claims within the scope of AR 25-20, 25-25, 25-30, 25-90, 25-100, 25-220, and AR 55-500.

(b) Claims for employees' compensation benefit in cases of disability or death of civilian employees of the United States resulting from personal injury while in the performance of their duties, as provided under the United States Employees' Compensation Act of September 7, 1916, as amended. (See United States Employees' Com-

pensation Commission's Administrative Order No. 1, as amended.)

(c) Claims of a contract nature, where payment cannot otherwise be readily made through disbursing officers because of procedural irregularities. (See Circular No. 33, this headquarters, 7 April 1945.)

(3) Issuance of amendments to USAFFE Claims Manual, 15 March 1945, (approved and issued by this headquarters on 7 April 1945), relating to matters of procedure. USAFFE Regulations No. 1-75, 4 October 1944, including C-1, 4 Dec. 1944, and other regulations or instructions in conflict with these regulations are rescinded.

(4) Duty as liaison officer between the United States Army and the Commonwealth of Australia or other governments as to details of claims coming within the provisions of the Foreign Claims Act or AR 25-90, which may be assumed or paid by the Commonwealth or by another government.

b. Direct communication is authorized between Claims Service, USAFFE, and,

(1) commanding officers authorized to appoint claim officers, on all matters pertaining to the investigation, processing and settling of claim.

(2) appropriate officials of the Commonwealth of Australia or other government as to matters pertaining to details of claims.

4. *Responsibility of Unit Commanders.* Notwithstanding the establishment of Claims Service, USAFFE, immediate responsibility for the investigation of an accident or incident resulting in property damage, loss, or destruction, or personal injury or death, rests upon the commanding officer of the regiment or corresponding unit, or that higher echelon, or base, camp, or station, which is most directly involved.

5. *Personnel and Supplies.* All military personnel for branch offices of Claims Service, USAFFE, including claims commissions created therein, will be furnished by Claims Service, USAFFE. The Commanding General, USASOS, will supply necessary civilian personnel, office supplies, transportation, quarters, subsistence, office space and equipment. Claims Service personnel on temporary duty with divisions, or other operational headquarters, will be provided with office space, office supplies and equipment, transportation, quarters, and subsistence by the command to which they are attached.
FECS 323.31

By Command of General MacArthur:

RICHARD J. MARSHALL,
Major General, General Staff Corps
Chief of Staff.

OFFICIAL:

s/R. E. Fraile
t/R. E. Fraile,
Colonel, A.G.D.,
Adjutant General.

APPENDIX AA

HEADQUARTERS CLAIMS OFFICE, AFWESPAC OFFICE OF THE CHIEF OF CLAIMS

APO 707
17 July 1945

GSCL
Subject: Claims Arising out of guerrilla activities.
Memorandum to: Commanding General, AFWESPAC.

1. This Memorandum covers an analysis of studies made as to claims arising out of guerrilla activities (see attached exhibits), and request that if such claims are to be settled policies be established with respect to processing and pay-

ing them by Claims Service, AFWESPAC, through its Commissions.

2. Guerrilla activities in the Philippines commenced soon after the surrender in 1942. Some of the units were led by U.S. Army personnel, some by Philippine Army personnel, and others by native leaders out of patriotic, or in some instances purely selfish, motives. The units became established throughout many areas in the Islands. Certain leaders, like Col. Fertig, Col. Cushing and Col. Volckmann, who were trained army officers, developed competent military organizations, while other leaders operated indifferently. A comprehensive report entitled "Guerrilla Resistence Movements in the Philippines" was published by G-2 GHQ, SWPA, on 21 March 1945, and covers the general nature, scope and history of guerrilla activity as completely as any other source of information.

3. Many problems were encountered by these organizations. There was no command authority, no common policies, no safe area for training or garrison purposes, leaders were without funds to meet payroll or purchase necessities, and there was no adequate supply of implements of war. Many members, as well as civilian employees were captured or killed.

4. Various units employed different methods in the field. Some borrowed money, some issued their own. A number purchased their supplies, others merely gave receipts or commandeered what they required. Some of the soldiers and civilians were paid wages, but most of them served as volunteers. Private property was utilized when needed and a considerable amount of it was destroyed.

5. It now becomes necessary to solve the claims problems arising as the result of these activities. Two of the better known commanders have made requests which require a determination and establishment of basic policies for general application throughout the Archipelago.

6. Under the leadership of Lt. Col. James M. Cushing, the guerrilla movement in Cebu was centralized 3 September 42 (Ex. 8). Unit commanders in that area called all former members of the National Volunteers Association to active duty as labor personnel (Ex. 8), while other able-bodied men volunteered their service. None has been paid. The various units claimed they maintained records showing dates and names of civilians employed without specifying the rate of pay (Ex. 8). General MacArthur on 22 January 44, by radiogram, recognized Col. Cushing as the commander of the Cebu area, stating "I shall endeavor to finance your operation" (Ex. 4(A)). This was confirmed by letter on 12 February 44 (Ex. (B)). Col. Cushing's command comprises 8,762 enlisted men and 624 officers (Ex. 5, par. 8), together with approximately 122,000 "loyal male civilian laborers" employed from time to time (Ex. 1). He did not issue guerrilla currency but spent ₱455,390.22 during the occupation, of which ₱276,620.00 was expended for partial payments to his officers and enlisted men, leaving outstanding indebtedness for subsistence in the amount of ₱954,659.02, and an undetermined amount due for labor (Ex. 5, par. 8). He has now requested "authority to obligate current funds for the payment of this labor through the American Disbursing Officer" (Ex. 1), and the authority "to pay all outstanding obligations incurred by this command since September 1942" (Ex. 3). Finance has set up methods and procedures to meet current payrolls (Ex. 5, par. 13(a)).

7. In the Northern Luzon area, Col. Moses and Col. Noble, escaped U.S. officers, estalished a guerrilla command. Colonel (then Major) Russell W. Volckmann, escaped from Bataan and reported to Col. Noble on 1 September 42. When Moses and Noble were captured by the Japanese on 1 June 43, Col. Volckmann, as senior officer, assumed command and since that time has directed the activities of the main guerrilla forces in Northern Luzon (Ex. 15(a), (B) and (C)). This organization later became

known as USAFIP. The details of his policies and procedure concerning finance and supply are set forth in the letter of Col. Volckmann, dated 16 October 44 to CG, SWPA (Ex. 15(a)) and statement of 7 June 45 (Ex. 15(B)). His organization extended through nine provinces (Ex. 15 (D)). On 7 June 45 the organization comprised 958 officers and 19,016 enlisted men (Ex. 15 (K)), beside numerous civilians sometimes designated as "bolo men" (Ex. 15 (G)). All units of the command were formally recognized as elements of USAFFE as of 9 January 45 (Ex. 15(J)).

8. In Col. Volckmann's organization, receipts were ordinarily given when purchases and requisitions were made. Sometimes prices were mentioned, but often the question of price was left to be fixed at a future date (Ex. 5, par. 2). Civilians were employed as cargadores, messengers, intelligence agents, etc. (Ex. 5, par. 2). Some services were rendered gratuitously without expectation of compensation; whereas in other instances, there was a general understanding that payment would be made at a later date at the rate of ₱1.00 per day for common labor and an undertermined higher scale for certain special services (Ex. 15). There is no authoritative estimate of the number or amount of these outstanding obligations. On 2 April 45 Col. Volckmann requested authority to pay back-pay of these civilian laborers and past receipts for supply (Ex. 12 and 14).

9. Opinions have been expressed that because the resistance movement in the Philippines was basically a spontaneous patriotic uprising by a large portion of the populace, that to reimburse all who rendered service might reduce future pariotism to mercenary level (Ex. 13, par. 4). The guerrilla leaders themselves are not in agreement as to compensation for civilian personnel. Col. Cushing and Col. Volckmann favor it, Col. Fertig is opposed to it, and Col. Peralta favors it only if other units receive

pay (Ex. 5, par. 14d). There is a serious legal question as to propriety of paying some of these claims (Ex. 7). Some of the leaders issued guerrilla currency, while others refused to do so, and a considerable amount of unredeemed currency is still held by persons who received it in payment for supplies furnished.

10. According to estimates based upon information secured by Claims Service, AFWESPAC, the number of claims which may be expected to arise out of the activities of the forces under Colonels Fertig, Cushing, Peralta and Volckmann, will be in excess of three quarters of a million, totalling possibly two hundred million dollars. In addition, if employer-employee relationship is established, U.S. Employees' Compensation benefits would extend to the tens of thousands killed or wounded in performance of duty, unless the theater commander should order otherwise. No estimate of the number or amount is possible at this time.

11. There is serious doubt that payment of expenses incurred by guerrilla organizations, even those recognized, can be paid out of presently appropriated funds.

12. In order for Claims Service to meet the above situation, it is necessary, and requested, that a definite policy be established as to the extent the United States will assume payment of the Claims arising out of guerrilla activities, and that specific instructions be issued to this Service with respect to the following basic questions:

a. Will the United States assume responsibility of paying any claims arising out of activities of guerrilla forces?

b. If so, will payment be limited to those arising out of the activities of recognized forces only?

c. If limited to recognized forces, will be the period covered extend from the date of the forces' organization, or from the date of recognition?

d. From what funds will such claims be paid?

e. To what extent will be the general policy as to payment of the following types of claims?:

(1) Labor service rendered.

(2) Property and supplies contracted for.

(3) Property and supplies requisitioned or commandeered.

(4) Money borrowed to finance units.

(5) Guerrilla currency paid for supplies and services.

(6) Use and occupancy of property.

(7) Damages caused by noncombat activities.

(8) Compensation benefits to civilians injured or killed on duty.

13. Should it be determined that any of the foregoing claims will be paid by the United States, this Service is in a position to immediately begin processing them upon receipt of instructions. Due to the fact that several guerrilla commanders and their subordinates are contemplating an early return to the States, the urgency of immediate action on this matter cannot be overemphasized.

/s/ J. A. Myatt
/t/ J. A. Myatt
Colonel, JAGD
Chief of Claims

AG 370.64 (17 Jul 45) DCS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC,
APO 500 6 August 1945.

To: Commanding General, United States Army Forces, Western Pacific, APO 707.

1. The answers to the several questions propounded by the memorandum of the Chief of Claims, dated 17 July 1945, are as follows:

a. Yes. *The United States Army will assume the responsibility for paying certain claims arising out of activities of guerrilla forces in the Philippines.* That responsibility will be limited to claims for the value of goods or services essential for carrying on operations against the enemy.

b. Yes. No payments will be made on claims arising out of activities of other than recognized guerrilla forces.

c. The effective date of such claims will be the same as those for the pay of the personnel of the guerrilla forces, i.e., the effective date of recognition, not the date upon which the decision to recognize is made.

d. *Such claims will be paid from the appropriation, "Expenses, Army of the Philippines".*

e. *Payment will be made only on claims where there was a clear understanding at the time the supplies and equipment or services were purchased or contracted for that payment would eventually be made.* There must have been a clear intention on the part of the guerrilla commander and of the vendor or employee that an obligation was being created. It must be definitely shown that the provision of such supplies, equipment or services was not intended as a patriotic donation to the common cause against the enemy. It must also be definitely shown that the supplies, equipment or services were essential for the operation of the guerrilla forces.

2. It is desired that immediate steps be taken to commence the processing of all such pending claims.

3. The identity of those guerrilla forces which have been recognized by this headquarters and the effective date of such recognition will be advised from time to time in letters from this headquarters.

By command of General MacArthur:

B. M. Fitch,
Brigadier General, US Army,
Adjutant General.

(Italics supplied)

APPENDIX BB

(40 Op. A. G. 185)

National Service Life Insurance Act

Personnel of the organized military forces of the Commonwealth of the Philippines called and ordered into the armed forces of the United States under authority of the President's Military Order of July 26, 1941, are in active service in the land and naval forces of the United States and are entitled to insurance under the National Service Life Insurance Act of 1940.

April 27, 1942.

The Administrator of Veterans' Affairs.

My Dear Mr. Administrator: Reference is made to your letter of April 22, 1942, requesting my opinion "whether the personnel of the organized military forces of the Government of the Commonwealth of the Philippines, who are called and ordered into the armed forces of the United States under authority of the Military Order approved by the President of the United States on July 26, 1941, are considered in the active service in the land or naval forces of the United States for the purpose of granting insurance (contract and automatic) authorized under the National

Service Life Insurance Act of 1940" as amended (October 8, 1940, c. 757, 54 Stat. 974, 1008; December 20, 1941, c. 602, sec. 10, 55 Stat. 844)."

With your letter you submit an opinion of your Solicitor which reaches the conclusion that the personnel mentioned are part of the land and naval forces of the United States, in the active service, and therefore entitled to insurance under the statute. I agree with this conclusion.

The National Service Life Insurance Act of 1940 makes insurance thereunder, both contract and automatic, available to every person in the active service in the land and naval forces of the United States.

Section 2(a) of the Philippine Independence Act (48 Stat. 456) reads, in part:

> "The constitution formulated and drafted [by the Philippine Legislature] . . . shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines Islands— . . .
>
> "(12) The Philippine Islands recognizes the right of the United States to . . . maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government." . . . .

Compliance with the above statutory requirement is found in section 1(12) of the Ordinance Appended to the Constitution of the Philippines.

Acting under the authority contained in the above-quoted provision of section 2(a) of the Philippine Independence Act and in section 1(12) of the Ordinance Appended to the Constitution of the Philippines, the President on July 26, 1941, issued a Military Order reading as follows:

"Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457) and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines: *Provided*, That all naval components thereof shall be placed under the command of the commandant of the Sixteenth Naval District, United States Navy.

"This order shall take effect with relation to all units and personnel of the organized military forces of the government of the Commonweath of the Philippines, from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War."

In view of the above, *it seems clear that personnel of the organized military forces of the Commonwealth of the Philippines called and ordered into the armed forces of the United States under authority of the President's Military Order of July 26, 1941, are in active service in the land and naval forces of the United States.* It follows in my opinion, that they are entitled to insurance under the National Service Life Insurance Act of 1940, as amended, in accordance with the terms of that statute.

Respectfully,

FRANCIS BIDDLE.

(Italics supplied)

APPENDIX CC

The right of the military commander to requisition supplies and material vitally needed for his operations and the corresponding obligation to compensate therefor are recognized by the authorities on International Law.

Ralston, in his work on *International Law and Procedure* (rev. ed. 1926, sec. 721), has the following to say:

"That private property taken for public use in time of war (even when it is completely under the conqueror's control) must be compensated for, has repeatedly been held . . . "

Ralston then quotes from the holding of the Commission in the *Putegnat* case (Moore, *International Arbitrations* 3718) as follows:

" . . . Property taken or destroyed for the public use lawfully by the civil or military authorities must be paid for by the government. (*Mitchell* v. *Harmony*, 13 How. 115; *Hale* v. *Lawrence*, 3 Zabiskie 728; *Grant* v. *United States*, 1 Ct. of Cls. 41)", id.:

"In the *Baker* case (Moore, id., 3668) Thornton, umpire, held the Mexican Government responsible for articles taken by troops for the use of the Mexican Army and so used . . . (Ralston, 727.)

"In the case of *Bartlett and Bargé*, Thornton, umpire, gave an award for the seizure of personal property for military purposes (Moore, id., 3721) . . . So in the *Willet* case, the Commission compensated for property seized for military purposes, used and destroyed, (Moore 3743," Ralston, id., 727.)

Woolsey, *International Law* (4th ed. 1875), has the following to say on this same subject:

" . . . but if the wants of the hostile army require, it (that is, private property) may be taken by authorized persons at a fair value . . . . " (Sec. 130.)

Moore's *International Law Digest*, vol. 7, p. 287, makes the following statement, based on the opinion of this Court, in the case of *Mitchell* v. *Harmony*, 13 How. 115:

"Private property may be taken by a military commander for public use, in cases of necessity or to prevent it from falling into the hands of the enemy, but the necessity must be urgent, such as will admit of no delay, or the danger must be immediate and impending. But in such cases the government is bound to make full compensation to the owner."

Moore also quotes the following from the decision of this Court in *United States* v. *Russell*, 13 Wall. 623:

"Where private property is impressed into public use during an emergency, such as a war, a contract is implied on the part of the government to make compensation to the owner."

Fenwick, in his book on *International Law* (1924) discusses the question of the right of a commander in the field to requisition supplies needed in the following language:

"Customary law gives to a military occupant the right to provide for the immediate needs of the army of occupation by drawing upon the supplies of the local population . . .

"The necessity of making payment for supplies taken has likewise been recognized within recent years, but the obligation is conditioned upon the convenience of the local commander. The Hague Regulations merely provide that contributions in kind shall, as far as possible, be paid for in cash; and where this cannot be done, a receipt shall be

given, and the payment of the amount due shall be made as soon as possible." (Fenwick, p. 483.)

Moore, *International Law Digest*, vol. 6, pp. 902-3, has the following to say on this subject:

"Every civilized state recognizes its obligation to make compensation for private property taken under pressure of state necessity, and for the public good . . . Whenever, from necessity or policy a state appropriates to public use the private property of an individual, it is obliged, by a law as imperative as that in virtue of which it makes the appropriation, to give to the party aggrieved, redress commensurate with the injury he has sustained . . . . " (*Grant's* case, 1 Ct. of Cls. 41, 48-49.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSE SORIANO,
Petitioner,

v.

THE UNITED STATES,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE PETITIONER

Part II—Statute of Limitations

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BRIEF FOR THE PETITIONER

Part II—Statute of Limitations

Part II of Brief for the Petitioner [1] is devoted exclusively to the question as to whether the suit by petitioner in the Court of Claims is barred by the Statute of Limitations, so that the Court of Claims has no jurisdiction of this case.

---

[1] Whenever there is reference to Part I herein, this means the Brief for the Petitioner filed August 27, 1956, and the Reply Brief for the Petitioner. References to Appendices are, as follows: A to E follow the Petition for Writ of Certiorari; F to CC follow Brief for the Petitioner; DD to II follow Reply Brief for the Petitioner (Part I).

OPINION BELOW

The opinion of the United States Court of Claims, Judges Littleton and Madden dissenting, in *Compania Maritima v. United States*, No. 50165, decided November 7, 1956, which is not yet reported (ten (10) copies thereof were deposited with the Clerk of this Court on November 8, 1956), is the law of that Court applicable to the subject case, to which Court this case would return upon a reversal by this Court of the decision of December 16, 1955 (R. 15). Part II of the Brief for the Petitioner is concerned only with the opinion in the *Maritima* case.

STATUTES INVOLVED

The Statute of Limitations applicable, 28 U. S. C. Sec. 2501, 62 Stat. 976, provides:

> "Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.
>
> * * * * *
>
> "A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases."

The Trading with the Enemy Act of 1917, as amended, 40 Stat. 411, 50 App. U. S. C. Sec. 1, *et seq.* provides in part, as follows:

> **"§ 2. Definitions**
>
> The word 'enemy', as used herein, shall be deemed to mean, for the purposes of such trading and of this Act [sections 1-6 and 7-39 of this Appendix]—
>
> (a) Any individual, partnership, or other body of in-

dividuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

* * * *

"The words 'United States', as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

"The words 'beginning of the war', as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

"The words 'end of the war', as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act [sections 1-6 and 7-39 of this Appendix].

* * * *

"§ 3. Acts prohibited

"It shall be unlawful—

"(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act [sections 1-6 and 7-39 of this Appendix], to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for

the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy; or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

* * * *

"(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of any enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: . . .

* * * *

"§ 8. Contracts, mortgages, or pledges against or with enemy or ally of enemy; abrogation of contracts; suspension of limitations

* * * *

"The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or

other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law . . .

* * * * *

"16. Offenses; punishment; forfeitures of property

"Whoever shall willfully violate any of the provisions of this Act [sections 1-6 and 7-39 of this Appendix] or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act [said sections] shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than 10 years, or both . . .

QUESTIONS PRESENTED

A. Was suit filed in the Court of Claims less than three years after the claim (or claims) of petitioner *accrued?*

B. If not, did the War against Japan in the Philippines, or War Legislation in the United States suspend, upon the effective occupation of the Philippines by Japan, the operation of the Statute of Limitations during the period of that occupancy, as against an American national, who at all times during the occupation was a citizen and resident of the Philippines, in a suit in the Court of Claims against the United States; or did the War Legislation—the Trading with the Enemy Act—merely create, upon the Japanese occupancy,

a new "legal disability" within the meaning of the saving clause of 28 U. S. C. 2501—the three-year period applicable to "legal disabilities"?

STATEMENT OF FACTS

For the purposes of these questions, it is being assumed by petitioner as having been admitted as facts by respondent or proven by petitioner (Part I—Brief and Reply Brief for the Petitioner) that, during the period January, 1942, to January, 1945, organized, recognized, authorized guerrilla officers of the United States armed forces requisitioned food and supplies from petitioner, required for their military operations, for which they gave receipts, promising that the United States Army would pay therefor upon the *promised* return of General Douglas MacArthur, at an indefinite future date, thus creating a debt of the United States for which the United States is liable.

This is the very question pending before this Court, upon which this Court granted Certiorari, found in Part I, Brief for the Petitioner, in the Brief for the United States and in the Reply Brief for the Petitioner. This question has to be answered in the affirmative for the purposes of this Part II of the Brief for the Petitioner, because of the decision in *Compania Maritima v. United States, supra.*

On October 4, 1944, (USAFFE Regulation No. 1-75), General MacArthur, as Supreme Commander (Commander-in-Chief), Southwest Pacific Area, of which USAFFE was a branch or division, established a Theatre Claims Service in the Philippines to settle claims against the United States Army for the destruction of property.

On October 20, 1944, United States armed forces landed on Leyte Island as the first step in the liberation of the Philippines Islands from the Japanese. That liberation occurred upon the surrender of Japan on September 2, 1945.

On April 7, 1945, General MacArthur, by directive, established an Army Claims Service to settle various private claims

against the United States Army. (App. Z, Pet. Br. p. 69b.)

The Army Claims Service, on July 17, 1945, questioned its authority to process and settle claims against the United States of civilian suppliers arising out of guerrilla activities, and on August 6, 1945, by endorsement on the Memorandum of July 17, 1945, General MacArthur established the following policies:

> "(a) . . . The United States Army will assume the responsibility for paying certain claims arising out of activities of guerrilla forces in the Philippines. That responsibility will be limited to claims *for the value of goods or services essential for carrying on operations against the enemy.*
>
> "(b) . . . No payments will be made on claims arising out of activities of other than *recognized guerrilla forces.*
>
> "(c) The effective date of such claims will be the same as those for the pay of the personnel of the guerrilla forces, i.e., the effective date of recognition, not the date upon which the decision to recognize is made.
>
> "(d) Such claims will be paid from the appropriation, '*Expenses,* Army of the Philippines'.
>
> "(e) Payment will be made only on claims where there was *a clear understanding* at the time the supplies and equipment or services were purchased or contracted for *that payment would eventually be made.* There must have been a clear intention on the part of the guerrilla commander and of the vendor or employee that *an obligation was being created.* It must be definitely shown that the provision of such supplies, equipment or services was not intended as a patriotic donation to the common cause against the enemy. It must also be definitely shown that the supplies, equipment or services were *essential for the operation of the guerrilla forces.*" (Pet. Br. App. AA, p. 77b.) (Italics supplied.)

Many such claims were thereafter filed; many were settled and paid; and many others were rejected. (Resp. Br. pp. 72-74.)

In February, 1948, the Army Claims Service advised Filipino claimants that *March 31, 1948,* would be the last day for the filing of such claims which had arisen prior to July 1, 1946.

Petitioner filed his claim before the Army Claims Service on *March 30, 1948.* It was summarily denied on *June 21, 1948.* (R. 3.)

The Department of the Army, by radio, directed the Army Claims Service to terminate its activities respecting claims as of June 30, 1949, which it did.

Petitioner filed a Petition in the United States Court of Claims on *April 26, 1951.* After an Answer and Reply, respondent filed a Motion for Judgment on the Pleadings, which was granted December 16, 1955, the Court holding that, there being no debt of the United States, it had no jurisdiction of this case. (Part I.)

Petitioner filed a Petition for Writ of Certiorari, which was granted April 30, 1956.

STATEMENT OF PROBLEM INVOLVED IN PART II

The question involved in Part I of the Brief for the Petitioner is assumed by petitioner to have been answered in the affirmative for the purposes of Part II thereof. The answer to the question involved in this Part II is, however, a condition precedent to a consideration of and answer to the question involved in Part I. Both questions are jurisdictional and interdependent.

In 1952, the United States Court of Claims held, in *Marcos v. United States,* 102 F. Supp. 547, and in 106 F. Supp. 172, (see also *Oerlikon Machine Tool Works Buehrle & Co. v. United States,* 102 F. Supp. 417) (a) that a claim based upon a requisition *accrued* on the date of requisition (not on the date on which demand for payment thereof was denied) but (b) that the War of Japan against the United States in the

Philippines, or War Legislation in the United States suspended, upon the effective occupation of the Philippines by Japan, the operation of the Statute of Limitations during the period of that occupancy, i.e., from at least the end of 1941 to September 2, 1945, so that a Filipino claimant whose cause of action accrued during the occupation had six years from September 2, 1945, within which to sue the United States in the Court of Claims.

In 1956 (November 7), the United States Court of Claims held, in *Compania Maritima v. United States, supra,* that neither War in the Philippines nor War Legislation in the United States suspended, upon the effective occupation of the Philippines by Japan, the operation of the six-year Statute of Limitations, but that War Legislation—the Trading with the Enemy Act—merely created, upon the Japanese occupation, a new "legal disability" within the meaning of the saving clause of 28 U. S. C. 2501—the three-year period applicable to "legal disabilities".

More than three years and *less than six years* elapsed between the date of the surrender of Japan, September 2, 1945, and the date on which petitioner filed suit in the United States Court of Claims, April 26, 1951.[2]

If it is found by this Court that, since the basis of the claim is a requisition and the express promise that the United States Army would pay therefor, at an indeterminate date, or the inherent obligation of the United States Army to pay for the requisitioned goods, still in the future, the claim *first* had to be *presented* to the United States Army and be *denied,* before the claim *could accrue,* then, and in that event, the claim accrued on *June 21, 1948,* and the Petition to the Court of

---

[2] If the decision of the United States Court of Claims in the *Maritima* case is correct as to Point A Part II, of this Brief, the date on which the claim accrued, and with respect to the suspension of the Statute of Limitations, Point B of Part II of this Brief, then the question involved in Part I of the Brief for the Petitioner is moot.

Claims (*April 26, 1951*) was filed well within three years of the date of the *accrual* of the claim.

There would then be no occasion to decide whether War or War Legislation suspended the operation of the Statute of Limitations, or was only a "legal disability".

So, too, if it is found by this Court that the claims accrued upon the date of each requisition, but that the Statute of Limitations was suspended by reason of the War or War Legislation, then since the Petition in the Court of Claims was filed *less* than *six* years thereafter, it is within the period of limitations of the statute.

SUMMARY OF ARGUMENT

POINT A

The claim accrued June 21, 1948; suit in the Court of Claims was timely filed.

Petitioner's suit in the Court of Claims is based upon an express promise that the United States Army would pay for food and supplies requisitioned from petitioner for military operations during the war against Japan in the Philippines, at an indefinite future date. It should be axiomatic that such a claim must *first* be presented to the Army for payment and payment thereof be denied, before the claim accrues and before petitioner may sue in the Court of Claims.

Decisions of this Court and decisions of the Court of Claims prior to its decisions in *Marcos v. United States, supra,* and in the *Maritima* case, *supra,* amply support this view.

The requisitions were made between January, 1942, and January, 1945. Claim for payment was made before the Army Claims Service, established by the United States Army to hear, determine and pay such claims, March 30, 1948. The claim was denied June 21, 1948. Suit was filed in the Court of Claims April 26, 1951, less than three years after the date on which the demand for payment was refused. Suit was, therefore, timely filed.

POINT B

The six-year Statute of Limitations applicable to suits in the Court of Claims was suspended as to all residents of the Philippines by the War against Japan.

I.

General Statement—War with Japan and the Trading with the Enemy Act

The United States was at war with Japan in the Philippines from December 7-8, 1941, to September 2, 1945, and from the end of 1941, to September 2, 1945, the Philippines were effectively occupied by Japan.

During this period, under recognized rules of public international law and decisions of this Court, all trade and communication between residents of the United States and the Philippines was prohibited, and *all courts of the United States were closed to inhabitants of the Philippines.*

Equally, *under the Trading with the Enemy Act* and General Ruling No. 11 of the Treasury Department, during that occupation, all residents of the Philippines were "enemies" of the United States, with whom all persons in the United States were forbidden to communicate or trade, under severe criminal penalties, and to whom *all courts in the United States were closed.*

Under *Marcos v. United States, supra,* petitioner, whose cause of action accrued[3] during the Japanese occupation, would have had six years after September 2, 1945, in which to sue the United States in the Court of Claims, which he did on April 26, 1951. Under the decision in *Compania Maritima v. United States, supra,* wherein the Court of Claims

---

[3] The acceptance of the date of "accrual" of the claim by petitioner, for the purposes of the argument under Point B, as being the date of the requisition, is not an admission by petitioner that the date of "accrual" is not in fact June 21, 1948—Point A.

reversed the *Marcos* case, the petitioner would have had only three years in which to sue, which he did not do, so that the claim would be barred by the Statute of Limitations and the Court of Claims would have no jurisdiction.

II.

Statutes of Limitations are suspended where War or War Legislation closes the courts to a plaintiff; the Trading with the Enemy Act created no new "legal disability".

Statutes of Limitations with respect to contracts between inhabitants of the territory owned or effectively occupied by warring nations are suspended, where trade and communication is prohibited by War or War Legislation, and where the *courts* of each belligerent are *closed* to inhabitants of the territory of the other.

Decisions of this Court since the Revolutionary War have recognized and adopted this rule of public law without exception, applying it even t[illegible] suit of the United States.

The decision in the *Maritima* case, to the effect that the six-year Statute of Limitations is suspended only as to *citizens* of an enemy, but not as to all *inhabitants* of the enemy-occupied territory during World War II, to whom it applied the three-year saving clause relating to "legal disabilities", is in conflict with decisions of three United States Circuit Courts of Appeals.

The Trading with the Enemy Act, upon which the decision in the *Maritima* case is based, merely incorporated in its provisions the principles of the rule of public international law and common law, then in full acceptance, and imposed penalties for its violation; that which the public and common law naturally could not do.

III.

The three-year saving clause in the Statute of Limitations does not bar the petitioner's action—the six-year limiting clause is applicable.

The pertinent language of present section 2501 (28 U. S. C.) and of the former section 262 (28 U. S. C.) are almost identical as to the *limiting* clause, the six-year clause, and are in substance the same as to the *saving* clause, the three-year clause.

The six-year *limiting* clause gives *every plaintiff*, otherwise qualified to sue, six years from the date the claim accrued the right to sue the United States in the Court of Claims.

During this period of six years, the Court of Claims is *open* to persons enumerated in the *saving* clause. The Statute of Limitations is running against them, because they have the right to sue and the courts are open to them or their representatives, but time in addition to the six years may be given them within which to sue, after the named "legal disability" has ended. The *saving* clause has always been strictly construed and has been held to apply *only* to persons who fall within its provisions fully.

The Court of Claims must be *open* to *every* plaintiff for a period of six years, under the *limiting* clause, and may be open for a further three years, or more, to persons coming within the provisions of the saving clause.

IV.

The exception in favor of persons to whom war closes the courts is always read into the limiting clause of all Statutes of Limitations.

Decisions of this Court fully support the above assertion. Under the decisions of this Court, from the date petitioner's claim accrued, *he had six years during which the Court of Claims was open to him*, within which to sue the United States in that Court. Petitioner sued in that Court within that time, and his claim is not barred by the Statute of Limitations, so that the Court of Claims does have jurisdiction of this case.

ARGUMENT

POINT A

The claim accrued June 21, 1948; suit in the Court of Claims was timely filed.

Petitioner urges that it *should be* axiomatic that, where a claim against the United States has arisen by reason of a proper, legally authorized, requisition for military needs, in an emergency condition in time of war, and of an accompanying express promise that the United States Army would pay at a future date, or even in the absence of such a promise—but merely under the Fifth Amendment to the Constitution, the Hague Conventions, and the Rules of Land Warfare—a contract with the United States Army, payment to be made by the United States at an indefinite future date—the claim must *first* be *presented* to the Army and *denied before the claim accrues*, and before suit thereon *may be* brought in the United States Court of Claims.

Such was the holding of the United States Court of Claims in *Dino v. United States*, 119 C. Cls. 304 (1951), where it was held that suit based upon a requisition by the Army in World War II could not be brought in that Court, until a *claim* for payment had *first* been *presented* to the appropriate branch of the Government and *denied*.

It would seen entirely logical and a reasonable legal conclusion to reach that, where a suit against the United States in the United States Court of Claims is predicated upon an informal contract such as a requisition made under emergency conditions in time of war, and an Army Claims Service has been set up by the United States Army to hear and determine such claims, demand for payment of the Army, by filing a claim with the Army Claims Service, and its refusal to pay, by a denial, are conditions precedent to filing suit in the Court of Claims, as held in the *Dino* case. That decision seems entirely correct, but it has not been followed by the Court of

Claims. Yet, insofar as Petitioner knows, the *Dino* case has never been *specifically* overruled, although it was not followed in the *Marcos* case and in subsequent decisions.

In *United States v. Taylor*, 104 U. S. 216, claimant had a right to claim from the Secretary of the Treasury the surplus received upon a tax sale. He was required *first* to present his claim to the Secretary of the Treasury. Suit was brought more than six years after the claim *arose*. This fact was held to be no bar to the suit, as there was no time limit within which the claimant must submit his claim to the Secretary of the Treasury. Only upon that *demand and a refusal to pay* would the claim *accrue*.

So, here, there was no breach of the implied or express contract to pay for the requisitions upon which this suit is based, when the materials were requisitioned and delivered, but only when payment therefor was refused. The date of the return of General MacArthur with the Armed Forces of the United States was indefinite. The breach of contract therefor occurred when, upon the return of the Army, the Army Claims Service denied the merits of the claim and refused payment. The claim of this petitioner against the United States then first *accrued*.

In *United States of America ex rel. Louisville Cement Company v. Interstate Commerce Commission*, 246 U. S. 638, this Court had before it the question of determining whether the cause of action for damages *accrued* "when the goods were received, or delivered by the carrier, or when the freight charges were actually paid", and held that it "*accrued*" when the freight charges were paid.

In *United States v. Smith*, 105 U. S. 620, this Court noted the distinction between it and *United States v. Clark*, 96 U. S. 37, saying:

> "The reasons why this Court held that the Statute of Limitations which applies to actions in general in the Court of Claims, of six years, did not apply to Clark's

> action, have direct relation to the differences we have noticed between that case and this. The Court there said that until the accounting officers had refused to allow the claim in his accounts there was no occasion to establish it in the Court of Claims. *There being no denial of his right, the Statute did not run.*" (Italics supplied.)

In the *Smith* case, the litigant's right was authoritatively denied, when he was ordered by the Postmaster General to, and did, pay the money. The Statute of Limitations *then* began to run, and as six years had elapsed before suit was brought, the claim was barred.

The subject case is indeed *Clark's* case.

In the case of *McMahon v. United States*, 342 U. S. 25 (1951), involving the grant of a new right to sue the United States, the difference between the date that a claim "arises" and the date it "accrues" is apparent. In that case the Court said the suit was brought under the Suits in Admiralty Act of March 30, 1920, (46 USCA 745), and the Clarification Act of March 24, 1943, (50 USCA 1291), permitting suit to be brought against the United States for injuries received by members of the crew on American-owned or -operated vessels within two years "after cause of action *arises*". The Court there held that the cause of action *arose* on the date of injury.

The statute applicable in the subject case begins to run, not when the cause of action *arises*, but only from the date the cause of action *accrues*.

The principle for which petitioner contends is supported by decisions of the Court of Claims prior to that in the *Dino* case, which were not applied in *Marcos v. United States, supra, Oerlikon Machine Tool Works Buehrle & Co. v. United States, supra*, or in *Compania Maritima, supra*.

In *Scott v. United States*, 18 C. Cls. 1, plaintiff, a Quartermaster in the United States Army, filed suit July 7, 1879, under the provisions of R. S. 1059, for relief from liability for United States funds in his possession that were stolen on September 4, 1868, from a field safe in his Army quarters.

No liability for the loss was imputable to the plaintiff, who, on April 17, 1882, in a letter to the Third Auditor, Treasury Department, asked for relief under the Statute. On April 18, 1882, the Treasury Department advised him that the relief available could only be had by a decision of the Court of Claims, as provided in R: S. 1059 and R. S. 1062.

The United States, upon suit being brought in that Court, defended on the ground that the six-year Statute of Limitations having expired more than six years after the date on which the funds were stolen, the Court was without jurisdiction to hear the cause. This defense was overruled by the Court on the strength of *Clark's* case, 11 C. Cls. 698, *United States v. Clark, supra; Hobb's* case, 17 C. Cls. 189; and *United States v. Smith, supra,* which decisions—

> ". . . are to the effect that it (a claim by or against the United States) does not become a claim within the meaning of the law until there has been, on the part of the Government some authoritative demand for payment, or a refusal to allow the credit, and only from the time of such demand or refusal does the statute begin to run."

The Court of Claims, in that case, after quoting from the opinion of this Court in the *Smith* case, said that where—

> ". . . it sufficiently appears . . . that claimant's right was authoritatively denied when he was ordered by the Paymaster General to pay the money, and that then was the proper time to apply for the protection of the Court of Claims by asking its decree that he should be credited on his accounts with that sum . . ."

had this to say in the *Scott* case:

> "In this case it does not appear that there was any authoritative *demand for payment, nor a refusal to allow a credit* in accounts of the claimant, until April 4, 1882. The claimant's case, therefore, coming clearly within the rule laid down in the recent decision of the Supreme Court,

is not cut off by the statute of limitations." (Italics supplied.)

In *Dino v. United States, supra,* the Court of Claims held that, because Dino had not presented his claim to the appropriate Government authority and had not had it disallowed, the Court had no jurisdiction to hear the claim.

If Dino was required *first* to submit his claim to proper officials of the War Department, the petitioner in the case at bar was justified, indeed required, to submit, as was done, his claim to the Army Claims Service, legally set up under the authority of the War Department to consider and dispose of claims of the character involved.

That being the fact, the claim did not *accrue* until payment was refused; or at least, during pendency of the claim, the Statute of Limitations was suspended. Otherwise, the Government could readily, until 1953, have sat on a claim, let the statute run, and the claimant would then have been out of Court. (28 U. S. C. 1494, 67 Stat. 226.)

In fact, considering the thousands of claims filed, many claims could not possibly have been given careful consideration, if any, on the merits, by the Army Claims Service, prior to the closing up of its operations on June 30, 1949. (Resp. Br. pp. 73-74.)

Since the question in this case involves the rights and remedies of thousands of our valiant *American Nationals by conquest, cession and allegiance,* at a time when we needed them badly, in the defense of the United States, and since our United States Army got the benefit of their property, as the Histories published by the Department of the Army and the various appendices show, (Pet. Br. App. S, pp. 24b-52b), we believe that this Court should hold that the following cardinal principles control this case:

(1) The United States Army had every right and power to requisition petitioner's property in the all-out War against Japan. (Part I.)

(2) Petitioner had every right to just compensation therefor, upon an express and implied contract, guaranteed by the Fifth Amendment to the Constitution of the United States, as well as by the Hague Conventions and the Rules of Land Warfare. (Part I.)

(3) Petitioner must first have demanded payment of the United States Army, which he did, and have had payment refused, before the claim accrued, and before he could sue in the Court of Claims.

(4) The Army Claims Service was set up to receive such demands for payment and to determine the claims for payment on their merits.

(5) Petitioner was given an opportunity to demand payment, duly demanded payment of the United States Army before the Army Claims Service established for that purpose, within the time limit for presenting claims, and was refused payment on *June 21, 1948*. On that date the individual claims, which *arose* between January, 1942, and January, 1945, first *accrued, and he was then entitled, during six years from that date, June 21, 1948*, to sue in the Court of Claims, which he did, on April 26, 1951, less than three years thereafter.

The claim is then not barred by the Statute of Limitations, and the Court of Claims has jurisdiction of this case.

POINT B

The six-year Statute of Limitations applicable to suits in the Court of Claims was suspended as to all residents of the Philippines by the War against Japan.

I.

General Statement—War with Japan in the Philippines and the Trading with the Enemy Act

On December 8, 1941 (55 Stat. 795, Pet. Br. App. J, p. 7b), the United States declared that a state of war existed between this country and Japan.

The invasion and occupation of the Philippines by the Japanese began immediately thereafter. By December 24, 1941, the United States forces had already begun evacuating Manila, and on December 25 or 26, 1941, Manila was declared an open city. The Japanese forces occupied Manila on January 2, 1942, obtaining thereby effective control and occupation of the Philippine Islands except for the defenses at Bataan and Corregidor Island which still remained under the effective control of the United States. In April, Bataan surrendered; on May 7, 1942, Corregidor surrendered; and on June 9, 1942, all organized armed forces of the United States in the Philippines were formally surrendered to the Japanese.

It can thus be seen that, before the end of December, 1941, conditions in the Philippines had become so chaotic that the Philippines were "enemy occupied" within the meaning of the Trading with the Enemy Act. In this connection, it should be noted that the Court below, in *Compania Maritima v. United States, supra*, found that the Manila area was "enemy occupied" as of December 21, 1941.

On September 2, 1945, Japan surrendered, and on that date Japanese occupancy and control of the Philippine Islands ended.

Thus, from the end of 1941 to September 2, 1945, under recognized rules of public international law and decisions of this Court, discussed *infra*, trade and communication between persons in the United States and residents of the Philippines was unlawful.

On December 8, 1941, the provisions of Section 3(a) of the Trading with the Enemy Act [50 U. S. C. App. 3(a)] automatically came into full force and effect, and all persons in the United States were thereby legislatively prohibited from trading and communicating with an "enemy" of the United States. The word "enemy" was defined in Section 2 of such Act to include any individual, of any nationality, "resident within the territory (including that occupied by the military

and naval forces) of any nation with which the United States is at war".

By General License of December 13, 1941 (6 F. R. 6420), the President provided:

> "A general license is hereby granted licensing any transaction or act prohibited by section 3(a) of the Trading with the Enemy Act, as amended, provided, however, that such transaction or act is authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses or otherwise, pursuant to Executive Order No. 8389, as amended."

By Presidential Memorandum of February 12, 1942, (7 F. R. 1409), the President provided:

> "Memorandum to the Secretary of the Treasury: All power and authority conferred upon me by Sections 3(a) and 5(b) of the Trading with the Enemy Act, as amended, are hereby delegated to the Secretary of the Treasury."

Thereafter on March 18, 1942, the Secretary of the Treasury issued General Ruling No. 11 (7 F. R. 2168). Such General Ruling prohibited all transactions which directly or indirectly involved any trade or communication with an enemy national. The term "enemy national" was defined to include any individual within enemy territory. The term "enemy territory" was specifically defined to include "that portion of the Philippine Islands occupied by Japan". The term "to trade" was defined in accordance with the terms of the Act.[3a]

The words "to trade", as used herein, shall be deemed to mean:

3a. The provisions of General Ruling No. 11 were carefully coordinated with censorship regulations governing the ordinary course of mail. Communication Ruling No. 1 (7 F. R. 2172) issued pursuant to 50 U. S. C. App. Sec. 618 and Executive Order No. 8985 (6 F. R. 6625).

"(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

"(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

"(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

"(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

"(e) To have any form of business or commercial communication or intercourse with. Oct. 6, 1917, c. 106, § 2, 40 Stat. 411."

As the war subsequently progressed, General Ruling No. 11 was amended from time to time in order to withdraw from the definition "enemy territory" certain countries which had been completely liberated by our armed forces.[4]

On May 29, 1945, after the conclusion of hostilities in Europe, paragraph (4)(b) of General Ruling No. 11 was amended to read as follows (10 F. R. 6313):

"(b) The term 'enemy territory' shall mean the following:

"(i) The territory of Germany, Italy, Japan, Bulgaria, Hungary, and Rumania; and

"(ii) The territory controlled or occupied by the military, naval, or police forces or other authority of *Japan*. Such territory shall be deemed to be those portions of Burma, China, French Indo-China, Hong Kong, British Malaya, the Netherlands East Indies, the *Philippine Islands* and Thailand occupied by Japan, and any other territory controlled or occupied by Japan." (Italics supplied)

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[4] For example, Continental France (9 F. R. 13196), Continental Belgium (10 F. R. 1430), and Luxembourg (10 F. R. 3904).

General Ruling No. 11 remained in this form through September 2, 1945.

As to the territories occupied by the armed forces of Japan, CCH Federal Banking Law Reporter, Vol. 2, Paragraph 41544, page 21, 513, states:

> "Occupied Territories—Particular territory in this area ceased to be 'enemy territory' as the Japanese occupying forces actually withdrew, (see (4)(b)(ii) of General Ruling No. 11) but all parts of this area are deemed, at the latest, to have ceased being 'enemy territory' on September 2, 1945, the date of the formal surrender of Japan."

See also *Compania Maritima v. United States, supra,* where it was found that the Japanese occupation of the Manila area did not cease until September 2, 1945.

It is clear, therefore, that international law, common law and War Legislation prohibited trade and communication between persons in the United States and residents of the Philippines, and that the *courts of the United States were closed to all residents of the Philippines,* from not later than the close of 1941 until September 2, 1945.

Prior to November 7, 1956, the law in the United States Court of Claims (*Marcos v. United States, supra,*) was that the war in the Philippines had suspended the operation of the Statute of Limitations and that a litigant residing in that enemy territory during the period of the war and whose claim accrued during that period had six years after the date of termination of that war within which to bring suit in the United States Court of Claims. That same principle, in substance, had also been applied in *Oerlikon Machine Tool Works Buehrle & Co. v. United States, supra.*

Since the requisitions which are the basis of the present claim were made between January, 1942, and January, 1945, it is apparent that (unless this Court accepts petitioner's arguments made in Point A hereof as to the date of *accrual* of the claim), petitioner's cause of action accrued during the

Japanese occupation of the Philippines. However, the Statute of Limitations did not begin to run against him until September 2, 1945. Consequently, petitioner having filed his petition in the Court of Claims on April 26, 1951, it follows that petitioner filed a timely suit in that Court.

On November 7, 1956 in *Compania Maritima v. United States, supra,* the Court of Claims specifically reversed its prior decisions in the *Marcos* case, and held:

(1) That since trade and communication between the *citizens* of belligerents is illegal and the courts of one are closed to the *citizens* of the other only under international and common law, the War suspends the operation of the Statute of Limitations only as to *citizens* of the belligerent nations;

(2) That even though the courts in the United States were in fact closed to the claimant, a Filipino residing in the Philippines during the Japanese occupation, the operation of the Statute of Limitations was not suspended as to him, because the courts were not closed to him by international or common law, but only by reason of the Trading with the Enemy Act, which merely created a "legal disability".

(3) That being under only a "legal disability", the claimant had only three years after September 2, 1945, the date on which that "legal disability" ended, within which to sue in the Court of Claims, and not six years.

As the facts show, suit was brought in the Court of Claims *more than three years* and *less than six years* after September 2, 1945.

The decision in the *Maritima* case was immediately brought to the attention of this Court, because if it correctly states the law, then the question now pending in this Court and awaiting argument in the subject case is moot.

This Court, on November 10, 1956, granted the parties herein the opportunity to brief and argue the question decided in the *Maritima* case, which is the occasion for this Brief for the Petitioner, Part II—Statute of Limitations.

II.

Statutes of Limitations are suspended where War or War Legislation closes the courts to a plaintiff—the Trading with the Enemy Act created no new "legal disability".

Statutes of Limitations presume that the *courts are open* to the plaintiff and that it is therefore not unjust to bar his suit after the passage of a specified time period. The presumption is destroyed where War or War Legislation closes the courts to the plaintiff, because trade and communication with the plaintiff are prohibited. In such circumstances, the operation of Statutes of Limitations are suspended during the period while the *courts are closed.*

In the United States, this principle has its origin in the time of the American Revolution, became firmly established during and after the Civil War, and has been unanimously upheld by the courts since that time. The rule applies to all types of Statutes of Limitations, whether procedural, substantive or jurisdictional. The principal cases dealing with the foregoing matter are:

(1) American Revolution: *Hopkirk v. Bell,* 3 Cranch 454 (1806).

(2) Civil War: *Hanger v. Abbott,* 73 U. S. 532 (1867); *Braun v. Sauerwein,* 77 U. S. 218 (1869); *Brown v. Hiatts,* 82 U. S. 177 (1872); *United States v. Wiley,* 78 U. S. 508; *The Protector,* 76 U. S. 687 (1869), 79 U. S. 700 (1871); *Levy v. Stewart,* 78 U. S. 244 (1870).

(3) World War I: *Steaua Romana Societate v. Woodman,* 2 F. Supp. 303 (E. D. Penn. 1931).

(4) World War II: *Osbourne v. United States,* 164 F. 2d 767 (2d Cir. 1947); *Chuchuru v. Chutchurru,* 185 F. 2d 62 (10th Cir. 1950); *Salvoni v. Pilson,* 181 F. 2d, 615 (D. C. Cir. 1950).

The rule of suspension applies, whether the plaintiff (a resident of enemy or of enemy-occupied territory) is a citizen

of a belligerent nation, of a friendly country, or of the United States, or is any other person with whom trade and communication is prohibited. In all of these cases, the plaintiffs did not have access to our courts.

The distinction made in the majority opinion in *Compania Maritima* is without substance and unsupported. In fact, in the decisions relied upon in making the distinction [*University v. Finch*, 18 Wall. 106, and *Poccardi v. Ott*, 98 S. E. 69 (West Virginia)] it is clear that *trade and communication were not prohibited*, and this prohibition is the very basis for the rule. The dissent shows what results can be reached by such a distinction.

The Federal courts have, without exception, followed the general rule, without ever making the distinction made by the majority opinion of the Court of Claims in the *Maritima* case. In fact, that decision is in direct conflict with the above cited decisions of three Circuit Courts of Appeals, arising out of World War II.

In *Osbourne v. United States, supra*, suit was brought by an *American* citizen who had been a prisoner of war and *not an enemy* alien. The Court noted, page 769, that a Japanese citizen would have been able to sue and that it would be the heighth of unreasonableness to grant such redress to one of our former enemies and deny it to a citizen who, through no fault of his own, was a prisoner of that enemy.

In *Chuchuru v. Chutchurru, supra*, the plaintiff was a resident of France, a *friendly country*, during its occupation by Germany, with which country the United States was at war in World War II. The pertinent facts are exactly the same as those in the *Maritima* case and in the subject case.

In these two cases and in the subject case, the plaintiffs were *residents of enemy-occupied territory* and their status as *"enemies"* and the inaccessibility of our courts to them was by virtue of the Trading with the Enemy Act, as well as by reason of public international and common law.

The Court said, in the *Chuchuru* case, at page 66:

"During the time the plaintiff resided in enemy country, the courts in this country were not within her reach. They were effectively closed to her. She was as completely foreclosed from access to the courts in Colorado as though she were a citizen of Germany and residing there. For purposes of this case, the statutes of limitation of Colorado were suspended during the time plaintiff was in enemy country. *Salvoni v. Pilson*, 86 U. S. App., D. C. 227, 181 F. 2d 615. With that period deducted, the suit was filed within six years after the cause of action accrued. Therefore, it was not barred. *Salvoni v. Pilson, supra.*"

Salvoni v. Pilson, supra, involved suit by a person who was in Italy during World War II, who brought suit in New York as a creditor some five years after the termination of war. *The nationality of the plaintiff does not appear.*

The Court said:

Page 616: ". . . Since the Revolutionary War, however, American courts have tolled statutes of limitations because of war."

Page 618: "First, 'we are not to send treasury abroad for the direct supply of our enemies in their attempt to destroy us', and, second, 'War, when duly declared or recognized as such by the war-making power, imports a prohibition to the subjects, or citizens, of all commercial intercourse and correspondence with citizens or *persons domiciled* in the enemy country'." (Italics supplied.)

The Trading with the Enemy Act of 1917, as amended, was noted by that Court as a specific prohibition against all intercourse and correspondence between persons in the United States and persons in enemy country. Yet, the six-year statute was applied.

All that need be said about the Trading with the Enemy

Act of 1917, of which the Court of Claims has made so much importance in the *Maritima* case, is that it merely *incorporated* into its provisions the rule of law recognized by public law and by our courts.

That rule is that, whether a statute on the subject exists or not *(Braun v. Sauerwein, supra)*, war between belligerents suspends the operation of any Statute of Limitations in regard to debts or other contracts between residents of the warring nations, whether on their own territory or on territory effectively occupied by either of the warring nations.

The rule of common and public law existed without the Trading with the Enemy Act. That Act merely implemented existing common and public international law. The rule of common and public law, which is general in terms and violations of which cannot be punished without specific implementing legislation, was spelled out by the Trading with the Enemy Act to guide the people resident in the United States in their conduct with residents of enemy territory during World Wars I and II. At the same time, it imposed severe penalties for violations of the Act, which would still have been violations of common and public international law, but without penalty.

Congress was fully aware of the fact that, under public and common law, intercourse of every sort is prohibited between inhabitants of territory occupied by warring nations during the period of the war, and that the courts of each are closed to the inhabitants of the other during the war, when it passed the Trading with the Enemy Act, as was noted by Judges Littleton and Madden, in their dissent in the *Maritima* case. (Opinion pp. 13-14.)

> "Furthermore, as we pointed out in the *Marcos* opinion, *supra*, Section 8(c) of the Trading with the Enemy Act, as amended, after providing that the running of the statute of limitations should be suspended in certain specified situations, also provides:

"* * * *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.'

"As noted in the *Marcos* opinion, Congress, in enacting that provision, had before it a legal memorandum listing the authorities holding that war suspends the operations of the statute of limitations. (S. Rept. 111, 65th Cong., 1st Sess., pp. 21, 22; S. Rept. 113, 65th Cong., 1st Sess., pp. 21, 22.)"

There is no suggestion in the legislative history of that Act that Congress had in mind changing in any way the existing rule of public and common law applicable to residents of enemy territory.

The Trading with the Enemy Act created no new "legal disability" respecting the right or ability to bring suit in our courts by persons residing in "enemy" territory, including the Philippines, which the War against Japan had not already created.

The general rule of public and common law and the relationship of it to the Trading with the Enemy Act is well expressed in *Steaua Romana Societate, etc., v. Woodman,* 2 F. Supp. 303 (D. C. E. D. Penn.)

In that case, the plaintiff was a resident of Rumania. That country was occupied by Germany, with which we were at war—World War I. We were not at war with Rumania.

The Court said, at page 314:

"Discarding, for the time being, consideration of the German interests involved, Rumania entered the war on August 27, 1916. On December 6, 1916, the *German forces occupied* Bucharest. Thereafter until November 30, 1918, on which day the King of Rumania returned to his capital, the country was practically entirely oc-

cupied by the military forces of Germany. *'Territory in the occupation of the enemy is dealt with on the footing of enemy territory being considered as part of the domain of the conqueror so long as he remained in possession of it. All persons domiciled within the occupied territory are consequently regarded as enemies.' Colombos, Law of Prize,* §44. *This rule was incorporated into our Trading with the Enemy Act,* October 6, 1917, 2(a), 50 USCA Appendix, §2(a). Under the strictest possible interpretation of the law, therefore, *the period of time while we were at war with Germany, during which Rumania was occupied by German forces would have to be deducted from the elapsed time."* (Italics supplied.)

III.

The three-year saving clause in the Statute of Limitations does not bar the petitioner's action—the six year limiting clause is applicable.

The Court of Claims, in the *Maritima* case, had first erroneously to conclude that the Statute of Limitations applicable to suits in its Court by Filipinos against the United States was not suspended by the War against Japan in the Philippines and that the Trading with the Enemy Act created a new "legal disability", in order to apply the three-year *saving* clause, rather than the six-year *limiting* clause of the Statute of Limitations (28 U. S. C. 2501). Its error, in applying the three-year clause, results from a complete misconcept of the history, purpose, and nature of the two provisions of section 2501.

(a) The Statute.

It is not necessary to decide whether the Statute applicable to this case is former 28 U. S. C. 262 or present 28 U. S. C. 2501. So far as is here material, both are identical in substance.

The first sentence of each statute is the *limiting* clause, which provides:

> "Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court . . . within six years after the claim first accrues." (28 U. S. C. 262.)
>
> "Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed . . . within six years after such claim first accrues." (28 U. S. C. 2501.)

By this clause Congress not only protected the United States from claims asserted after the passage of six years, but Congress also provided that *every plaintiff* who was otherwise qualified should be entitled to a period of *six years* in which to present his claim in the Court of Claims.

The second sentence of former 28 U. S. C. 262 is the *saving* clause, which provides:

> "The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court . . . within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred . . ."

This *saving* clause has been shortened in 28 U. S. C. 2501 to provide, as follows:

> "A petition on the claim of a person under *legal disability* or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases." (Italics supplied.)

Except in the case of married women—who are no longer under "legal disability"—the above 1948 amendment effected no change in the *saving* clause. Consequently, the discussion below will, for purposes of clarity, refer to the 28 U. S. C. 262 version of the *saving* clause.

There is nothing whatsoever in the statute itself or in the legislative history of Section 2501 which suggests that Congress intended thereby to enlarge or diminish the then existing *saving* clause of Section 262.

(b) Origin of the Saving Clause.

There is nothing obscure or unusual about the *saving* clause. As Congress was aware, this portion of the statute is originally derived from the seventh section of the famous English statute of James I (21 Jac. 1, c. 16) *McDonald v. Hovey*, 110 U. S. 619, 621 (1884). That statute "was adopted in most of the American colonies before the Revolution, and has since been the foundation of nearly all of the like legislation in this country." *Wood v. Carpenter*, 101 U. S. 135, 139 (1879); *Levy v. Stewart, supra; Hanger v. Abbott, supra.*

That statute, after providing different periods of limitation for various types of action, concluded as follows:

> "VII. Provided nevertheless, and be it further enacted, That if any person or persons that is or shall be entitled to any such action . . . be or shall be at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *feme covert, non compos mentis,* imprisoned or beyond the seas; that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, discovert, of sane memory, at large, and returned from beyond the seas, as other persons having no such impediment should have done."

The *saving* clause in 28 U. S. C. 262, *supra*, differs from the English statute in only three respects. (1) It omits im-

prisoned persons and redefines persons under mental disability. (2) It gives to the persons enumerated only three additional years after the cessation of their disabilities, instead of the additional full statutory period (in this case six years) provided in the English statute. (3) It adds the words after the semicolon, thus putting into express form the English rule of construction.

(c) The Court of Claims Is Not Closed to the Persons Enumerated in the Saving Clause.

The second point to be noted about the *saving* clause in 28 U. S. C. 262 is that the courts are always *open* to all persons specified therein.

Infants may bring suit against the United States, *Moore v. United States*, 7 C. Cls. 356 (1871); *Sgambati v. United States*, 172 F. 2d 297 (CA 2 1949), cert. den. 337 U. S. 938 (1949); *Paschal v. United States*, 95 F. Supp. 293 (SDNY 1950), and so may insane persons, *Leonard v. United States*, 18 C. Cls. 382 (1883); *Johnson v. United States*, 87 F. 2d 940 (C. C. A. 8, 1937). They need only be represented by their next friend, guardian, committee or trustee. Present Rule 20(c) of the Court of Claims recognizes this by providing:

> "(c) *Infants or Incompetent Persons.* Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian *ad litem*."

The statutory words "persons beyond the seas" apply "only to American citizens who are out of this country." *Pacifico v. United States*, 80 C. Cls. 391, 393 (1934); *United States v.*

Greathouse, 166 U. S. 601 (1897); *Mosby v. United States*, 24 C. Cls. 1 (1888).

The Court of Claims is always *open* to such persons, because it is neither unlawful nor impossible for them, *for that reason*, to communicate with an attorney in the United States, or to file their petition by mail. Mere "absence from this country (is) no disqualification for the bringing of a suit and the prosecution thereof." *Pacifico v. United States, supra.*

As has already been noted, the statutory reference to *married women*, is archaic, and the Court of Claims is always *open* to them.

Finally, it should be noted that the *saving* clause does not in *itself* constitute a limitation upon the rights of the persons included. All of them may bring suit at any time notwithstanding its provisions. The law is well summarized in 34 Am. Jur., Limitation of Actions, §196:

> "§196. *Right of Person Under Disability to Bring Suit notwithstanding Saving Clause.* The courts are universally agreed that a provision in a statute of limitations which extends the time for bringing suit as to persons under a disability is a *saving* clause, of itself imposing no disability, and that a person under its protection may sue during the period of the disability as if the provision did not exist. This rule has been applied to persons laboring under disabilities due to insanity, infancy, coverture, and imprisonment." (Italics supplied) Accord: 109 A. L. R. 954-958 annotation.

(d) Purpose of the Saving Clause.

The third point which should be noted about the *saving* clause in 28 U. S. C. 262 is the reason why Congress felt it *necessary* to place such an *express* provision in the statute. The answer is this:

> "In the absence of any exception in their favor . . . a statute of limitations will be applied as against the rights

of infants, married women (although under common law disability of coverture), and insane persons." 34 Am. Jur., Limitation of Actions, §192; and see also §§197, 201, and 206.

Examples of recent cases applying this rule are *Sgambati v. United States, supra,* and *Paschal v. United States, supra.* As this Court succinctly stated in *Vance v. Vance,* 108 U. S. 514, 521 (1883):

> ". . . the Constitution of the United States, to which appeal is made in this case, gives to minors no special rights beyond others, and it was within the legislative competency of the State of Louisiana to make exceptions in their favor or not. The exemptions from the operation of statutes of limitation usually accorded to infants and married women do not rest upon any general doctrine of the law that they cannot be subjected to their action, but in every instance upon express language in those statutes giving them time after majority, or after cessation of coverture, to assert their rights."

It follows that since infants, lunatics, married women, and persons beyond the seas are always free to bring suit, and since in the absence of a *saving* clause the statute will run against them, Congress by the *saving* clause intended to benefit only such of these persons as had *already let six years elapse.*

In other words, Congress gave to the persons specified in the *saving* clause two rights: (1) they might sue within the six years provided by the *limiting* clause; or (2) they might have the additional time provided by the *saving* clause. A plaintiff who could bring himself within the *saving* clause could choose whichever alternative he desired, but Congress *never* intended the statute to bar his claim *before the passage of at least six years during which the Court was open to him.*

(e) The Saving Clause is Strictly Constructed.

The fourth point to be noted about the *saving* clause in 28 U. S. C. 262 is that it is to be strictly construed. It applies to no persons except those possessing the disabilities specifically described as to type and time. *De Arnaud v. United States*, 151 U. S. 483 (1894).

Consequently, where the cause of action accrues *prior to* the existence of the disability, the statute will run even against the four classes of persons enumerated. *De Arnaud v. United States, supra.* Moreover, even where a claim accrues *during* disability the period of the *saving* provision will begin to run as soon as the disability ceases, and will continue to run even though the disability subsequently reoccurs. *Savage v. United States*, 23 C. Cls. 255 (1888).

A fortiori the statute always runs against *unmentioned personal* disabilities, such as sickness, surprise or accident, *Kendall v. United States*, 107 U. S. 123, 125 (1882); ignorance, *Green v. United States*, 17 C. Cls. 174, 187-8 (1881), or the inability to truthfully take an oath, *Kendall v. United States, supra; Sierra v. United States*, 9 C. Cls. 224, 231-233 (1873).

The reason for this strict rule of construction is apparent. Congress, like most other legislative bodies, considered it desirable to preserve the rights of persons laboring under certan *personal common-law disabilities* at the time when their causes of action accrued. In such cases Congress gave to infants a maximum possible period of twenty-four years in which to sue, and gave to the other persons, if the disability continued, an indefinite maximum period at least up until death. The *saving* clause, however, discloses no evidence that Congress intended to confer such a generous period of time upon persons laboring under any other *personal* condition, except the ones expressly described. The words "no other disability than those enumerated shall prevent any claim from being barred" merely make this point clear.

To recapitulate, three cardinal principles should be borne in mind when considering the *saving* clause in 28 U. S. C.

262. (1) It includes only persons to whom the *Court is always open*. (2) It is *not a limiting* clause; it is a *saving* one, conferring *greater* rights upon the persons mentioned, than does the *limiting* clause, and without such a *saving clause* the statute would run against them. (3) Only the persons with the disabilities specifically described are to be included in the *saving* clause and thus given an additional three years, or more, in addition to the six years during which the Court was *open* to them.

(f) The Correct Construction of the Statute.

The correct construction of the statute is readily apparent. Unlike coverture, infancy, insanity and absence from the United States, the universally recognized exception in favor of persons to whom the courts are closed by war, does not rest upon a condition of the *person*, but upon a condition of the *court*. The statute is based on the presumption that the *court is open*, and that every plaintiff with a good cause of action will not unreasonably delay in bringing suit. But, where a superior power *closes the courts* to him, the basis of the presumption is destroyed, and he is *deprived* of a portion of the time which Congress intended him to have to sue.

The decisions of this Court, which are discussed in the following section of this brief, make it clear that Congress intended the statute to mean that every plaintiff is entitled to *six years during which the Court is open to him* to sue.

To effectuate this purpose, the exception in favor of persons to whom the Court is closed—such as persons resident in the territory of warring nations—must be read into the *limiting* clause, or *first* sentence of the statute. What is implied in the six-year *limiting* clause are the words *"during which the Court is open"*, and therefore the period during which the Court is *closed* is always deducted, when computing the six-year period specified in the *limiting* clause.

This implied exception—the closing of the Courts because of War or War Legislation—has absolutely no relationship

whatever to the express *saving* clause for the benefit of persons to whom the Court is always *open*.

The reason why this Court holds that the statute is suspended is that without such suspension, persons to whom the courts are closed are *deprived* of a portion of the time which Congress or the other legislative bodies intended them to have. For this same reason, they cannot be read into the *saving* clause, for such a construction *also deprives* them of a portion of the time which Congress intended them to have.

IV.

The exception in favor of persons to whom war closes the courts is always read into the limiting clause of all Statutes of Limitations.

(a) The Decisions of the United States Supreme Court.

In the leading case of *Hanger v. Abbott, supra*,[5] the cause of action accrued in October 1859, one and a half years prior to the time when the Civil War closed the Arkansas courts to the New Hampshire plantiff. Suit was brought in April 1865, five and a half years later. The Arkansas statute of limitations (apparently Rev. Stat. 1838, ch. 91, sec. 6), gave the plaintiff three years in which to bring suit, and also contained the following saving clause:

> "Sec. 13. If any person entitled to bring any action in the preceding seven sections mentioned, except in actions against sheriff for escapes, and actions of slander, shall, at the time the cause of action accrued, be either within the age of twenty-one years, or insane, or beyond the limits of this State, or a married women, such person shall be at liberty to bring such action within the time specified in this act, after such disability is removed."

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[5] "The *Hanger* case has been consistently followed in the federal courts." *Osbourne* v. *United States*, 164 F. 2d 767, 769 (CA 2 1947).

After holding that the courts were closed to the plaintiff between May 1861 and January 1865, the Supreme Court held that this period should be *subtracted from the total period which had elapsed between the accrual of the cause of action and the filing of the petition.* Since the *remainder was less* than the statutory three years, the Court held that the suit was not barred and that the plaintiff should recover judgment. Clearly the Court read the implied exception into the three year *limiting* clause of the statute and construed the statute to mean that every plaintiff should have three years during which the court was *open* to him in which to bring suit. Analyzing the problem, the Court stated (p. 542):

> "* * * the right to sue was suspended by the acts of the government, for which all citizens are responsible. *Unless the rule be so, then the citizens of a State may pay their debts by entering into an insurrection or rebellion against the government of the Union, if they are able to close the courts, and to successfully resist the laws, until the bar of the statute becomes complete, which cannot for a moment be admitted.* Peace restores the right and the remedy, and as that cannot be if the limitation continues to run during the period the creditor is rendered incapable to sue, it necessarily follows that the operation of the statute is also suspended during the same period." (Italics supplied)

If, however, the Court had held that the exception should be read into the *saving* clause of the statute, it would have directed judgment for the *defendant*. The cause of action had accrued *prior to* the closing of the Arkansas courts, and more than three years had elapsed between accrual and suit. Consequently the limiting clause (Sec. 6) would have barred the action, and the plaintiff would not have been within the saving clause (Sec. 13).

The significance of the decision is that the recognized exception in favor of persons to whom the *court is closed* has

no relation whatever to a *saving* clause for the benefit of married women, minors, lunatics, and persons beyond the seas. This unique exception—War and War Legislation—to all statutes of limitations is read into the *limiting* clause of the statute, not into the *saving* clause.

The case which conclusively establishes the erroneousness of the *Maritima* construction of the statute of limitations is *United States v. Wiley, supra.* There the cause of action arose in 1860, and the United States brought suit in February 1869. The statute of limitations—like 28 U. S. C. 262 and 28 U. S. C. 2501—had been enacted by *Congress* (Act of April 10, 1806, ch. 21, §4; 2 Stat. 374) and was *a six year limiting statute with a three year saving clause.* It provided:

> "Sec. 4. *And be it further enacted,* that all suits on marshals' bonds * * * shall be commenced and prosecuted within six years after the right of action shall have accrued, and not afterwards; saving nevertheless the rights of infants, *feme coverts,* and persons *non compos mentis,* so that they sue within three years after their disabilities are removed." [6]

The parties stipulated that between May 1861 and May 1865 the defendant could not be served with process for the commencement of the action, and the Court noted judicially that this inability to effect service was caused by the war (p. 513). The Court continued (p. 513):

> "The question, therefore, is whether the time during which the war existed, and during which it was impossible to serve process for commencement of suit, is to be deducted from the time which elapsed between 1860 and February 15th, 1869."

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[6] This statute is now 28 U. S. C. 544.

First the Court held that the rule of suspension established by *Hanger v. Abbott*, (and *The Protector*) *supra*, applied also to claims asserted by the United States Government, because even though the Government always had the *right* to sue during the Civil War, nevertheless it did not have the *ability* to do so (pp. 513-514). The Court also held that the Act of June 11, 1864 (13 Stat. 123) had not changed or affected the rule of these two cases (pp. 514-515).

Then, speaking of the foundation for the rule, the Court stated (pp. 513-514):

> "* * * Statutes of limitations are indeed statutes of repose. They are enacted upon the presumption that one having a well-founded claim will not delay enforcing it beyond a reasonable time, if he has the power to sue. Such reasonable time is therefore defined and allowed. But the basis of the presumption is gone whenever the ability to resort to the courts has been taken away. *In such a case the creditor has not the time within which to bring his suit that the statute contemplated he should have.* * * *" (Italics supplied)

Consequently, the Court held that the suit was not barred, because substacting the four closed years (1861-1865) from the nine years between the accrual of the cause of action in 1860 and the instigation of suit in 1869, left less than the statutory six-year period.

From the above quoted portion of the opinion it is clear that this Court has held that the implied exception in favor of persons to whom the courts are closed shall be read into the *first* portion, or *limiting* clause, of statutes of limitations.

Had this Court *not* held that the exception should be read into the *limiting* clause, but into the *saving* clause, it would have affirmed judgment for the *defendant* on one of two grounds. First, the Government would have been barred by the three year provision in the *saving* clause, since suit was

brought in 1869 (which was *more than three years after* the reopening of the courts in 1865). Secondly, the cause of action had arisen in 1860, a year *prior to* the time when the courts were closed in 1861.[7]

In *Brown v. Hiatts, supra*, the plaintiff was a Virginia mortgagee and the defendants were two Kansas mortgagors. The cause of action arose on May 29, 1861, a month after the Civil War began, and suit was not brought until February 27, 1867. The defendants pleaded the three-year Kansas statute of limitations (Laws Kan. 1859, c. 3, p. 84, §§ 19, 20) which also contained a full English-type saving clause (§ 26). The statute clearly barred the action, unless the rule os suspension of *Hanger v. Abbott* was applied.

The court below, which was the federal Circuit Court of Kansas, took note that the question of whether northern statutes were suspended for southern plaintiffs had never been determined by the United States Supreme Court. But after making a careful and thorough examination of the law (4 Fed. Cas. 384), the Circuit Court held that: (1) northern courts were closed to the plaintiff until April 2, 1866; and that (2) under the rule of *Hanger v. Abbott* the suit was timely because brought within three years of that date.

The defendant, among other things, argued that the Civil War did not commence until the President's Proclamation of August 16, 1861, and that, therefore, the statute of limitations began to run on May 29, 1861 when the cause of action arose and continued to run "notwithstanding the subsequent disability to sue". To this, the Circuit Court replied (p. 390):

> "* * * The views of a majority of the judges in the Prize Cases would perhaps authorize us to hold that the war existed before the August proclamation, and before

[7] The words "at the time the cause of action accrues", although not stated in the saving clause, are implied. *McDonald* v. *Hovey*, 110 U. S. 619 (1884).

the bond in suit matured. But we do not place our decision upon this ground, but upon the ground that even if the statute of limitations did begin to run, the effect of the act of July 13, 1861,[8] and of the proclamation of August 16, 1861,[8] was to suspend its operation. *Where a statute continues to run, notwithstanding a subsequent disability, it is in cases where it is not unlawful to bring suit, and, perhaps, in cases only where it is possible to sue, as in the case of an infant or married woman, by next friend. The rule does not apply to the disability occasioned by a state of war.* In Hanger v. Abbott, the plaintiff's debt accrued before the war, and yet the period covered by the war was deducted. So, also, in Jackson Ins. Co. v. Stewart, Semmes v. Insurance Co., and Wall v. Robson, before cited. And so, also, in The Protector, *supra*, the statute had begun to run before the war commenced, and yet, the period occupied by the war was not included in computing the time allowed to take an appeal. In this connection, it is proper to answer an argument strenuously insisted upon by the respondent's counsel, viz. that courts cannot add to the exceptions of the statutes. Ordinarily, it is undoubtedly true, that courts cannot put into the statutes of limitations exceptions which the legislature has not seen fit to adopt, or has omitted to put there. *It is a sufficient answer to this objection, to say that the laws of war, especially those enacted by congress, are the paramount law, and, by suspending the right of action, they suspend also the running of the statute.* This seems to be the view of the court in Hanger v. Abbott, 6 Wall. [73 U. S.] 532, 541, 542." (Italics supplied).

Upon appeal, this Court affirmed, stating (pp. 183-184):

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[8] The Civil War legislation prohibiting trade and communication with the South (12 Stat. 257 and 1262).

"We concur also with the Circuit Court in its ruling, that the statute of limitations of Kansas did not run against the right of action of the complainant during the continuance of the civil war. * * * The period, therefore, between the 27th of April, 1861, and the 2d of April, 1866, must be excluded in the computation of the time during which the statute has run against the right of action of the complainant on the bond and mortgage in suit, and being excluded the present suit is not barred."

Speaking of the grounds for its decision, the Supreme Court stated (pp. 184-185):

"It is unnecessary to go at length over the grounds upon which the court has repeatedly held that the statute of limitation of the several States did not run against the right of action of parties during the continuance of the civil war. It is sufficient to state that the war was accompanied by the general incidents of a war between independent nations; that the *inhabitants* of the Confederate States on the one hand, and of the loyal States on the other, became thereby reciprocally enemies to each other, and were liable to be so treated without reference to their individual dispositions or opinions; that during its continuance all commercial intercourse and correspondence between them were interdicted by principles of public law as well as by express enactments of Congress; that all contracts previously made between them were suspended; and that the courts of each belligerent were closed to the citizens of the other.

"Statutes of limitation, in fixing a period within which rights of action must be asserted, proceed upon the principle that the courts of the country where the person to be prosecuted resides, or the property to be reached is situated, are open during the prescribed period to the suitor. The principle of public law which closes the courts of a country to a public enemy during war, renders

compliance by him with such a statute impossible. As is well said in the recent case of Semmes v. Hartford Insurance Company, 'The law imposes the limitation and the law imposes the disability. It is nothing, therefore, but a necessary legal logic that the one period should be taken from the other.' " (Italics Supplied.)

(b) Petitioner's Claim is Not Barred.

It is clear that the Statute of Limitations (either 28 U. S. C. 2501 or 28 U. S. C. 262) in no way bars any portion of the petitioner's claim. Congress intended and this Court by its decisions, considering the facts presented, can be said to have consistently held that the statute does not become a bar until after the passage of *a total of six years during which the Court of Claims was open to the petitioner.*

The provisions of the *saving* clause are entirely immaterial, since that clause, which originally concerned only four specified categories of persons to whom the Court of Claims is *always open,* was not changed by Congress in Section 2501.

There is nothing peculiar in the wording of 28 U. S. C. 262 or 28 U. S. C. 2501. These statutes, like nearly all Federal and State Statutes of Limitations in the United States, are derived from the same English statute (*supra,* p. 32). All such Statutes of Limitations have the same simple and basic provisions, in substance, and minor variations in language are entirely immaterial. *McDonald v. Hovey, supra.*

The only respect in which the Statute of Limitations applicable in the Court of Claims is different from *some* other Statutes of Limitations is that it is jurisdictional.

As the Court of Claims and this Court have decided on several occasions, (1) the respondent (i.e., the Government) cannot waive the statute, and (2) this Court, as well as the Court of Claims, may raise the Statute of Limitations, on its own motion, even if the Government does not raise it, when the facts show that this jurisdictional question is involved.

CONCLUSION—PART II—STATUTE OF LIMITATIONS

Petitioner's suit in the United States Court of Claims is not barred by the Statute of Limitations, so that the Court of Claims does have jurisdiction of this case.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSE SORIANO, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

On Writ of Certiorari to the United States Court of Claims

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

Question Presented

The respondent has left out elements of the question of such importance that it can be said that the question as presented by respondent is not correctly stated.

The question involved, divided into its two component parts, is (1) whether the Filipinos comprising the Philippine Army, (a) inducted into the United States Armed Forces, Far East, in 1941, by Military Order of President Roosevelt, as Commander-in-Chief of the Army and Navy of the United

States, and by the implementing orders of Douglas MacArthur, Commander-in-Chief of USAFFE, (b) who, after the surrender of General Wainwright, in 1942, conducted military operations as organized guerrillas against Japan, in accordance with the express and implied authority and orders of General MacArthur, from 1942 to 1944, and (c) who were subsequently retroactively recognized by the President of the Commonwealth of the Philippines as authorized elements of the Philippine Army, and *again* by General MacArthur as authorized elements of USAFFE, were a part of the armed forces of the United States, i.e., American soldiers; and (2) if so, as established by petitioner, whether such American soldiers, the authorized, organized, recognized guerrillas, had the right to requisition food and supplies to carry on their military operations in the name and for the account of the United States armed forces and thereby create a debt of the United States for which the United States is liable.

As the question is stated by the respondent, there has been omitted therefrom the recognition of the authorized, organized recognized guerrilla forces by General MacArthur during the period 1942-1944, when the requisitions were made. Also, respondent has begged the question, again saying that the Filipinos fought *with* the United States military forces and not *in* the United States Army Forces, Far East, the term used in the Military Orders of their induction.

Respondent in its brief has reversed the order of petitioner's argument and has first dealt with the question of the *right and power* to requisition, before going into the question of the *capacity* in which the requisitioning officers acted. Perhaps this was done because respondent did not wish to discuss the right of an American officer, in occupied territory in the midst of war, to requisition food and supplies, for the military operation of his American soldiers, since respondent has hardly touched upon this point, the reply to petitioner's argument on this question having been relegated to a mere footnote. (Resp. Br. pp. 46-47.)

Respondent's Brief Summarized

I

No one can bind the United States in procurement matters, unless he has been expressly or impliedly authorized to do so by the United States. There is no allegation that the guerrillas were authorized officers of the United States, and even had they been agents, they could not have bound the United States without express or implied authorization.

II

The petition contains no factual allegation of any express authority, and no express authority in fact existed, from the United States, for the guerrillas to contract upon its behalf.

III

The "arrangements" between the United States and the Commonwealth of the Philippines, or the Philippine Army, were not such as to confer, by implication, authority upon the Philippine Army, or the Filipino officers, to requisition supplies for the account of the United States.

(a) Reference is made to the "autonomy" given to the Commonwealth of the Philippines under the Philippine Independence Act and to an analysis of its relations with the United States from 1934 to 1946, to establish that the Philippine Army did not become a part of the armed forces of the United States.

(b) It is argued that the Army of the Philippines was not "merged" into the armed forces of the United States.

(c) It is urged that the benefits given by the Congress of the United States to Filipino soldiers, which are treated as insignificant, did not change the *status* of the Philippine Army with respect to the United States armed forces.

(d) Considerable emphasis in respondent's argument is laid upon the separate appropriations by Congress to pay for the Philippine Army and the disbursement of such funds by

the Philippine Government, under only the supervising authority of General MacArthur.

IV

It is suggested to this Court that the Court abdicate its power of judicial review—in fact, in essence, deny the Petition for the Writ of Certiorati which it has granted—for the sole reason that the Executive branch is settling, on a "political" basis, the thousands of claims which still exist between the United States and the Philippines, both contractual and otherwise.

These arguments, as well as the question of the right of an officer in the armed forces of the United States, *in time of war*, on territory occupied by the enemy, to requisition food and supplies, needed for military operations, will be considered seriatim.[1]

Petioner's Reply

I

Requisitions under Emergency Conditions—War

Petitioner concedes freely that, generally speaking, the United States can be held liable only on contracts made by officers acting under valid authority. It is even admitted that there must be express or implied authority for an officer, or agent, to bind the United States upon a contract, even in time of war, unless there is an emergency. These are well recognized general rules.

Petitioner has urged that this general rule does not apply in the presence of the Hague Conventions, the Rules of Land Warfare, the surrender of General Wainwright, and the orders of General MacArthur, as Commander-in-Chief, and of officers acting under his orders, insofar as are concerned the military operations of the organized guerrillas in the Philippines, during 1942 to 1944.

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[1] Appendices A to E follow the petition for Writ of Certiorari, pp. 1-A to 25-A; Appendices F to CC follow Petioner's Brief, pp. 1-B to 83-B; Appendices DD to JJ follow Petioner's Reply Brief, pp. 1-C to 36-C.

Respondent has admitted that it may be contended that military necessity gave the guerrillas authority which they did not otherwise have to deal with "emergency conditions", citing *Mitchell v. Harmony*, 13 How. 115, 133, *United States v. Caltex*, 344 U. S. 149, 153. However, this admission is qualified by the assertion that a French soldier could not bind the United States, despite the existence of an emergency, and that the petition makes no allegations of "emergency conditions" such as to bring the claim within the rule of *Mitchell v. Harmony* (Resp. Br., pp. 43-44).

In the first place, we are dealing with an American national, an alien for very limited purposes, inducted into our armed forces, an American soldier, acting under orders of General MacArthur—not a French soldier—matters to be discussed further below.

In the second place, in view of the allegations of the petition respecting the military orders involved, the surrender, and the guerrilla warfare which led to the requisitions, it seems hardly necessary to have alleged that "emergency conditions" existed. The events of which this Court must take judicial notice establish nothing but the existence of "emergency conditions."

(1) The Military Order of President Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, of July 26, 1941, inducting the Philippine Army into the armed forces of the United States, is predicated upon the "existing emergency". (Pet. for Writ, App. B, p. 10a.)

(2) War, in itself, is an emergency. Japan committed acts of war against the United States on December 6-7, 1941, and Congress, by joint resolution, declared a state of war to exist December 8, 1941. (Pet. Br., App. J, p. 7b.)

(3) The Japanese attack on Pearl Harbor, and on Clark Field in the Philippines, destroying a substantial part of the fleet upon which General MacArthur had depended, and the effective power of our Philippine Air Force, called the worst defeats in our military and naval history, created an

"emergency" for USAFFE in the Philippines from which it never recovered and ended in the surrender of the United States armed forces in the Philippines. (App. II, p. 34c.)

(4) The failure to surrender the troops which were not at Bataan or Corregidor, which became the nucleus of the organized guerrillas, created imponderable "emergency conditions" for the guerrilla warfare which General MacArthur had ordered prior to his departure from the Philippines, and which was authorized and recognized by him from Australia all during the period with which we are concerned, 1942-1944. (Pet. Br. App. S, pp. 33b-52b, App. U, pp. 61b-68b, and App. EE, to GG, pp. 2c-29c.)

(5) The "emergency conditions" existed until the return of General MacArthur to the Philippines in 1944 and the surrender of Japan in September, 1945. (Pet. Br., App. S, pp. 35b-52b.)

The requisitions involved in this case were made under "emergency conditions".

II

Military Operations in the Philippines—World War II

The operations of the armed forces of the United States in the Philippines have to be divided into three periods in order to get a clear picture of the subject case. They are confused in respondent's Brief, particularly when reference is made to the number of claims filed, disposed of, or pending against the United States and amounts already expended by the United States to alleviate the hardships and financial situation in the Philippines. (Resp. Br., pp. 44-46.)

The three periods are—

(a) *The period from July 26, 1941, until the surrender of Corregidor in May, 1942.*

That period has been completely covered by Petitioner's Brief, pp. 11 to 19, which is amply supported by contemporaneous documents and by Morton's history, *The Fall of the*

Philippines, published by the Department of the Army,[1] showing that the Philippine Army was *inducted* into the armed forces of the United States and was just as much a part of the armed forces of the United States, from July 1941 to May 1942, as were the Marines and the naval units under General MacArthur's Command. (Pet. Br. App. S, p. 48b.)

On December 4, 1941, Colonel Samuel L. Howard, Commander of the Fourth Marines, was in Manila with his regiment, and Admiral Hart turned the regiment over to the Army "for tactical employment". Within a week the entire regiment had reached Corregidor, and on December 29 Colonel Howard was made commanding officer of the beach defenses. (Morton, p. 528.)

The Marines had their own uniform, their own insignia, their own weapons, their own officers, their own scale of pay, and their own paymasters. They were not part of the Army of the United States as defined by Congress, but they were part of the United States Army Forces, Far East, under General MacArthur and General Sutherland, from whom they received their orders. (Morton, p. 528.) The Philippine Army was no different. The Philippine Army could well be, and has been, called the "Philippine Section, United States Army Forces, Far East". (App. GG, p. 27c.)

A very minor part of the requisitions with which we are concerned were made during this period. The primary purpose of this part of the Brief for the Petitioner was to show the origin of the troops—Army, Navy, Marines, and the Philippine Army, USAFFE—which later became the nucleus of the organized guerrilla movement, and the "organized guerrillas" in the Philippines, and their status as American soldiers in 1941-1942. Had either the Marines or these

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[1] Hereinafter, when reference is made to Morton's *The Fall of the Philippines*, the citation will be abbreviated to Morton, followed by page number; and when reference is made to Cannon's *Leyte: The Return to the Philippines*, also published by the Department of the Army, the citation will be abbreviated to Cannon, followed by the page number.

Filipino-American soldiers made the important requisitions involved, during this period, (1941-1942), they could and would have obligated the United States as to them, just as they did with respect to the few requisitions that they did make in this period.

(b) *The period from the surrender of General Wainwright until the return of General MacArthur at the end of 1944, and, in fact, until early 1945.*

This is the period during which the organized recognized guerrillas made the principal requisitions of food and supplies from petitioner, to carry on military operations, upon which this suit is based.

Respondent suggests that there was neither express nor implied authority to bind the United States on the part of these guerrillas during this period. Petitioner urges that there were both.

To dispose of petitioner's principal argument respecting the right of an American officer to requisition *in time of War*, the very essence of this suit, in a mere footnote, suggests inability to answer the argument made by petitioner. Because petitioner's argument is so treated, and because of the perfunctory manner in which the respondent has answered, the pertinent part of respondent's footnote follows, in full. It will then be taken up in its three component parts:

> "Petitioner has suggested that the guerrillas here involved received authority by virtue of the Military Requisition Act of 1941 (55 Stat. 742) (Pet. Br. 37-43), under the Hague Conventions and principles of international law (Pet. Br. 34-35, App. pp. 81b-83b), and under the Rules of Land Warfare (Pet. Br. 35-36). None of these appears to merit extended discussion. The Military Requisition Act of 1941 authorized the President under certain circumstances to requisition personal property. The regulations issued by the President under that statute required advance approval and other procedural steps which would preclude its being applicable to guerrilla procurement. See 8 Fed. Reg. 12068. The Hague Conventions and the principles of international law re-

ferred to by petitioner have no bearing on the case since they deal with rights as between governments. No one disputes the fact that the United States had the right to take property in the Philippines for a public purpose. This right was expressly reserved in the Independence Act and in the ordinance to the Philippine Constitution. App. C, *infra*, pp. 85-86. The question is whether the various transactions in the Philippines among Filipinos were authorized takings by the United States Government. International authorities and conventions do not deal with the subject of delegating authority from the United States to particular individuals. The Rules of Land Warfare, referred to by petitioner, is an Army Field Manual which explains the Hague Conventions and the rules of international law. It is not an operative command or order. It does not delegate authority from the government to any one."

(i) *The Military Requisition Act*—Thus, it is urged that since the Military Requisition Act of 1941 required advance approval and other procedural steps, this would preclude its being applicable to guerrilla procurement.

Considering the chaos in the Philippines following the surrender, when it was impossible to get word either to the United States or to General MacArthur in Australia for months, (Cannon, p. 16), this is a most extraordinary position. The notion that the various United States Army Generals, Colonels, Majors, and Captains *could* have cabled the War Department for authority to requisition, in the presence of existing conditions, or *would* have done so, in the presence of the Rules of Land Warfare and the Hague Conventions under which they had authority to act, mentioned below, is simply fantastic.

Of course, the regulations requiring prior approval and the taking of procedural steps, before the statute was applied in the United States, where, as involved as conditions were, they were not "emergency" and time could be taken, but when a band of a thousand or two thousand or more men, in the midst of military operations, had run out of food and

supplies, that they could be expected to cable the United States or General MacArthur for authority to get some by requisition is beyond belief, regulations notwithstanding. Furthermore, the organized guerrillas had the authority of General MacArthur to fight as guerrillas, which gave them the right to requisition, as respondent well knows. (Morton, Pet. Br. App. S., pp. 34a to 48b; App. EE and FF, pp. 2c to 17c, *infra*.)

General King surrendered Bataan contrary to the orders of General Wainwright, Commander-in-Chief of USAFIL; General Wainwright surrendered Corregidor contrary to the orders of General MacArthur, Commander-in-Chief of the Southwest Pacific Area, but under the general authority of President Roosevelt, Commander-in-Chief of the Army and Navy of the United States. Were they required to follow Army regulations or to get prior authority to make the surrenders effective? (App. II, pp. 34c to 35c.)

(ii) *The Hague Conventions*—"The Hague Conventions and the principles of international law referred to by petitioner have no bearing on the case since they deal with rights as between governments."

Apparently the purpose and nature of the Hague Conventions were not made clear to respondent. They do not purport to delegate authority of any sort to anyone. They are an agreement between Nations as to what the armies of so-called "civilized nations" at war have the right to do, in conducting land warfare on occupied territory without violating the law of Nations. In the Hague Conventions referred to, the signatory Nations gave to one another the power and right to requisition in time of war on the territory of the other, i.e., give the troops of that Nation this *right*. Each signatory Nation gave up a part of its *de facto* sovereignty, so to speak, and admitted that, in operations of war, the troops of the other could as a matter of right, requisition food and supplies of the civilian population and could pay therefor immediately, or obligate the requisition-

ing Nation to compensate therefor at a later date. The existence of these Conventions is necessary to the prosecution of a successful war with the least harm to the civilian population, in a spirit of fairness, and is essential as a charter for the warring powers, so that they may provide their needs and at the same time lay down implementing rules for their fighting armies.

The Hague Conventions admittedly are an agreement between Nations. They do, however, have a bearing on this case, notwithstanding, because they permit a signatory Nation to exercise the *right* of its Army to requisition on occupied territory, in time of War, without being in violation of international law. To exercise this right, the United States Army adopted Rules of Land Warfare, for the guidance of our troops in occupied territory, in time of war.

(iii) *The Rules of Land Warfare*—"The Rules of Land Warfare, referred to by petitioner, is an Army Field Manual which explains the Hague Conventions and the rules of international law. It is not an operative command or order. It does not delegate authority from the government to any one."

Without knowing what is meant by "an operative command or order" or "delegation of authority", or why such a command or power should be in the Army Field Manual, and admitting that they are neither of these, let us call them just "Rules of Land Warfare to guide our Army," which is what they are. What is their purpose?

The Rules of Land Warfare authorize an officer of the United States Army, carrying on military operations in a foreign country, including territory occupied by the enemy, to requisition private property for military operations, and to bind the United States to compensate therefor, if he is unable to pay immediately. If a civilian should refuse, unquestionably the requisitioning officer has the right to take his requirements by force of arms in his foraging operations. (Resp. Br. pp. 60-61.)

It can be asserted, without fear of possible contradiction, that the Rules of Land Warfare (1) gave General MacArthur full authority and power to requisition trucks and buses to carry troops, as he did, gave to the officers under General MacArthur full authority to requisition food and supplies prior to the surrender of Corregidor, which they did, (2) gave full authority, the right and power to the organized guerrillas, authorized and recognized by General MacArthur, to requisition food and supplies needed for their military operation during the period 1942 to 1944, and (3) gave full authority and power to General MacArthur to requisition arms, supplies and money, to equip, feed and pay his troops, including the recognized guerrillas called into the service of the Sixth and Eighth United States Armies in the Philippines; during the period end of 1944 to the end of the War, and that the officers under him exercised that right and power. (App. GG, p. 17c-29c.)

The entire guerrilla movement was under specific and implied orders of General MacArthur, made before he left for Australia and after he reached Australia.

The fact that General MacArthur had ordered guerrilla operations, and that General Wainwright expected them, is shown in the Brief for the Petitioner, App. 5, pp. 34b-40b. This apparently was not considered sufficient to impress respondent with its actuality. That these guerrilla operations were under General MacArthur is very clear from other documents, some of which can be identified only as "guerrilla papers".[1]

Under date of May 15, 1942, Colonel C. A. Thorp issued the following General Order No. 1:

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[1] Cannon, p. 14, Note 5.

HEADQUARTERS USAFFE LUZON GUERRILLA
ARMY FORCES

May 15, 1942

General Order
No. 1

"1. The undersigned hereby assumes the responsibility of *Commanding Officer of all U. S. Guerrilla forces in the island of Luzon* and that of personal representative of General Douglas MacArthur, for the conduct of guerrilla operations and incident affairs. *This is in accordance with verbal instructions from Gen. MacArthur on January 20, 1942.*

"2. All guerrilla leaders on the island shall derive their authority to operate from this Headquarters and shall be duly appointed by the undersigned or his representatives having such authority in writing from the Headquarters.

"3. *Any person or persons operating as guerrilla in the name of the U. S. A. without the required authority in Par. 2, supra, will be considered as enemy of the U. S. Government.*

"4. *Any person belonging to the armed forces of the U. S. Government entering into such unlawful operations shall be punishable as provided for under the articles of War of the U. S. A.*

"5. All persons guilty of looting private property, confiscating supplies or otherwise disturbing the peace of civilians unlawfully by misrepresenting themselves as a part of the Guerrilla forces of the U. S. A., will be treated as enemies of the U. S.

"6. All guerrilla units bearing proper authority to operate as such are authorized to collect arms and equipments belonging to the U. S. Government from persons unlawfully possessing such arms and equipments.

"7. All guerrilla units authorized to operate will be directly responsible thru the district and are under the command of this headquarters.

"8. Each area and District Commander receiving this order will be responsible that true copies of this order shall be distributed to all leaders.

For GENERAL MACARTHUR:

C. A. THORP
Lt. Col., U. S. A.
Guerrilla Representative USAFFE"
[Italics supplied.]

Lieutenant Colonel Thorp commanded north central, east central and south Luzon. He was captured and killed November 1, 1942, and most of the officers under him were captured and killed in 1943. Other officers took up the organization.

Major Praeger, Captain Walter Cushing, Lieutenant Colonel Guillermo Nakar, Colonels Moses and Noble and Colonel Russell W. Volkmann molded the various elements in Luzon under their command into guerrilla bands, under orders of General MacArthur. (Cannon, pp. 14-20; Pet. Br. App. S, pp. 37b-39b, 43b-47b; and App. EE, pp. 2c-12c.)

One by one, all but Colonel Volkmann disappeared in Japanese punitive expeditions from late 1942 to 1943.

Nakar surrendered in September, 1942, Cushing died in ambush, Moses and Noble surrendered June, 1943, Praeger was caught in August. In October, 1943, Colonel Volkmann assumed full command and maintained command throughout.

Lieutenant Colonel Anderson, Major Laphan and Colonel Merrill all headed guerrilla organizations which were *contemporaneously* recognized by General MacArthur, and which were later retroactively recognized by President Osmena as authorized elements of the Philippine Army, upon their screening by the Sixth and Eighth United States Armies, and inducted by General MacArthur individually or by units into USAFFE. (See (c)-The third period-*infra.*)

On Luzon were also Markings Fil-Americans, under Agustin, who received his citizenship by reason of his being in the United States armed forces as a guerrilla, (Pet. Br. pp. 21-23), Hunter's ROTC, under Miguel Ver, killed in 1942; and President Quezon's own guerrillas. (Pet. Br. App. Y, p. 67b.)

In February or March, 1943, Lieutenant Commander Charles Parsons, USN, was sent to the Philippines, on the first of his many trips, by General MacArthur. He reached Mindanao by submarine with supplies and signal equipment for Colonel Fertig. On February 13, 1943, through Parsons, General MacArthur appointed Colonel Fertig as Commanding Officer of the Tenth Military District and granted him authority to extend an intelligence net over the Ninth Military District. Similar instructions were given to Colonel Peralta, Jr., for the Sixth Military District, with intelligence coverage over the Seventh and Eighth Military Districts. (Cannon, pp. 16-21; App. EE, pp. 6c to 7c.) They received *written retroactive recognition* August 23, 1945, from General MacArthur. (Pet. Br. App. Y, p. 63b.)

These districts were all based upon the ten districts previously set up for the Philippine Army.

Major Ingeniero was recognized to be in command of the Bohol Area (App. EE, p. 10c); Major Ruffy on Mindoro. *Ruffy v. Chief of Staff*, 75 Phil. Rep. 875.

On the island of Negros, Colonel Peralta, Jr., with the implied authority of General MacArthur, appointed Colonel Salvadore Abcede in command. He was retroactively recognized in writing and by official order, on August 23, 1945. (Pet. Br. App. Y, p. 64b.)

Major Villamor was sent by General MacArthur to organize Negros and other islands, and returned to Australia at the end of 1943. (Cannon, p. 19.) (App. FF, p. 14c.)

On Leyte, Colonel Kangleon, who had escaped as a prisoner of war, took command and was subsequently made Commanding Officer of the Ninth Military District by Colonel *Fertig*. He also organized the Samar Command. He received full

recognition *contemporaneously* by General MacArthur, by being appointed Commanding Officer of the Leyte Area on November 28, 1943. (Cannon, p. 16; App. EE, p. 9c.)

Retroactively, on August 23, 1945, Kangleon was recognized as being in command of organized guerrillas, *in writing and by official order*, as of October 21, 1943. (Pet. Br. App. Y, p. 63b.)

On Cebu, Lieutenant Colonel James M. Cushing, whose brothers had organized guerrillas in northern Luzon and who had stocked ammunition which never reached Corregidor, organized a guerrilla band which was recognized by General Headquarters February 12, 1944, effective January 22, 1944. As Cebu was the most important Japanese base outside of Manila, it was the source of important intelligence information for General Headquarters.

The preparedness of Cebu for this guerrilla warfare, by Colonel Cornell and Colonel Christie, under orders of General MacArthur is well reported by Morton, pp. 502, 579-581. (App. II, p. 36c.)

The foregoing is only a short summary of the recognition of organized guerrillas under express and implied orders of General MacArthur. It fully shows, however, that General MacArthur, as Commander-in-Chief of USAFFE, authorized and ordered the guerrilla movement in the Philippines, to be undertaken at a later date, as early as January 2, 1942—*verbally*—that he recognized the organized guerrillas, who made the subject, or similar, requisitions during 1942 to 1945, some by written orders, some verbally, and some through officers under his command, as authorized officers to requisition food and supplies for their military operations in the name of the United States armed forces, and to bind the United States to pay therefor. This was war!

All other recognitions of guerrilla officers were likewise directly from General MacArthur, or indirectly through officers under his command, sent to the Philippines for the purpose, or already there.

Formal recognition of these commands carried with it three things: authority to communicate direct with General Headquarters; *authorization to issue scrip to finance guerrilla operations;* and the promise of future deliveries of supplies to the extent possible.

In the foregoing, petitioner finds express and implied authority to bind the United States during the period 1942 to 1944, as alleged in the Petition. (R. 2.)

Certainly, the authorization to issue scrip, which was done, is a promise that the United States Army will pay, or redeem the scrip, at an eventual date. This was done generally, but *not in the case of Soriano.* The authority to issue scrip, or promise to pay, was inherent. The fact that scrip was issued and some of it redeemed is clear from the record.

"They (the guerrillas) also assumed control over various phases of public activities—the allotment of food supplies, the issue of *emergency currency,* and the punishment of criminals." (Cannon, p. 50.)

"The funds available to Kangleon consisted of $50,000 in prewar currency ('only a few hundred' of which were spent by him), $225,000 in 'bogus Japanese currency' and $479,198 in *emergency currency* printed in the islands and used for 'army' purposes." (Cannon, p. 19.)

[Italics supplied.]

"General MacArthur (August 30, 1944) also established the financial policies to be followed. A new series of Philippine Treasury Certificates, called 'Victory Pesos', would be introduced in the liberated areas. The exchange rate would be two for an American dollar. All prewar currency and *all emergency currency officially determined to be bona fide* would be accepted at face value. All other Philippine or enemy currency would be worthless." (Cannon, p. 199.)

[Italics supplied.]

Thus, General MacArthur not only recognized liability of the United States for emergency currency issued by the organized guerrillas whom he had recognized, but, upon the

return of our armies to the Philippines, authorized to be issued a new money which, naturally, would be redeemed by the United States, on the basis of two pesos for a dollar, in accordance with the Rules of Land Warfare.

From the foregoing, it is very clear that General MacArthur gave express, and there naturally resulted therefrom implied, orders, that guerrilla warfare would be carried on; and that during 1942 to 1944, through emissaries and by letters and cable, he authorized named persons to take overall command of various districts in the Philippine Islands in which to organize guerrilla bands, which became known as "organized guerrillas", who had full authority to communicate with headquarters, issue scrip, and to requisition and contract for supplies in the name and for the account of the United States Army.

They were all that was left of USAFFE, all the rest of the troops having been surrendered between April and June, 1942.

There was neither time nor ability to communicate, other than by radio, or to issue orders other than those sent by Villamor and Parsons, with President Osmena in the United States, General MacArthur in Australia, and the Japanese occupying the Philippines. Nor was there any need to specifically authorize the making of requisitions for military needs under these conditions. This right was inherent.

These are the facts which support the allegations that the requisitions of petitioner made in the name of the United States Army, on the island of Negros, were made under express or implied authority of General MacArthur, in accordance with the Hague Conventions and the Rules of Land Warfare, and support the conclusion that a debt of the United States therefor was thereby created.

Petitioner urges that there is no question that, under the Hague Conventions, the Rules of Land Warfare, and the principles of international law, organized guerrillas, so recognized by General MacArthur, had the authority to

requisition supplies needed for their military operations and thereby to create a debt of the United States, and did so.

(c) *The period from the end of 1944 to 1946.*

Upon the return in October, 1944, of President Osmena and General MacArthur, it was possible to get the *paperwork* in order. First, the organized guerrillas had to be reactivated into the Philippine Army, in order to be again inducted into USAFFE under the Military Order of President Roosevelt of July 26, 1941. This was done, after screening by, and recommendations of, the Sixth and Eighth United States Armies, by order of President Osmena, in his Order No. 21 of October 28, 1944, who recognized them as authorized *elements of the Philippine Army.* Immediately, General MacArthur recognized the organized guerrillas so recognized *as authorized elements of USAFFE* and reactivated them into the armed forces of the United States, Far East, (USAFFE). "Guerrilla personnel . . . not recommended for recognition *and who do not belong to the Armed Forces of the United States*" reverted to civilian status. (App. GG, p. 25c.)

[Italics supplied.]

As Commander-in-Chief, SWPA, of which USAFFE was a branch, General MacArthur also recognized *on paper* the overall commands which he had previously recognized during their military operations in 1942 to 1945, the period during which the requisitions, the subject of this case, were involved, under date of August 23, 1945, as follows:

"GENERAL HEADQUARTERS UNITED STATES
ARMY FORCES, PACIFIC

CM/jb
APO 500
August 23, 1945

AG 370.64 (23 Aug. 45) PA
Subject: Recognition of Guerrilla Units
To: Commanding General, United States Army Forces,
Western Pacific, APO 707
Chief of Staff, Philippine Army, APO 501

"1. Guerrilla forces as indicated below were recognized by the Commander-in-Chief, SWPA, on dates shown:

Commander	Area	Date
Col. Wendell W. Fertig	10th Mil. Dist.	13 Feb. 1943
*Col. Macario Peralta	6th Mil. Dist.	13 Feb. 1943
Col. Ruperto K. Kangleon	Leyte Command	21 Oct. 1943
Col. Alejandro Suarez	Sulu Command	11 Feb. 1944
*Lt. Col. Salvador Abcede	7th Mil. Dist.	8 Jul. 1943
Lt. Col. James Cushing	Cebu Command	12 Feb. 1944
Lt. Col. Charles W. Smith	Samar Command	4 Oct. 1944
Maj. Ismael P. Ingeniero	Echol Command	21 Oct. 1943
Maj. Jose M. Ruffy	Mindoro	15 Dec. 1944
Maj. Pablo Muyco	Palawan	23 Feb. 1945
Capt. Manuel Donato	Masbate	3 Apr. 1945
Capt. Sofronio Untalan	Marinduque	15 Dec. 1944

"2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of units under commanders listed above is that of members of the Philippine Army.

"By command of General MacArthur:

D. W. Dooley,
Capt., AGD,
Asst., AG."

On August 12, 1947, the date of recognition of the island of Negros, where petitioner's supplies were requisitioned, was revised to November 17, 1942. (Pet. Br. 64b; Resp. Br. 62.)

The many subsequent orders dealing with the recognition

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*Colonel Peralta, verbally appointed by Lt. Commander Parsons and then by letter by General MacArthur, in command of the Sixth Military District, with intelligence coverage over the Seventh Military District, then appointed Lt. Col. Abcede in command of the Seventh Military district, which covered the island of Negros, (App. EE, pp. 6-7). They were both retroactively recognized on paper by General MacArthur in the above order.

of individual guerrilla units by Order of General MacArthur usually contained the following language:

> "1. The following guerrilla units are recognized by the Commander-in-Chief, Southwest Pacific Area, *as authorized elements of the United States Army Forces in the Far East*, effective as of the date specified after each unit listed:
>
> [Italics supplied.]
>
> * * * * * * *
>
> "2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 28 October, 1944, the status of members of these units is that of officers and enlisted men of the Philippine Army." (App. GG, pp. 28c-29c.)
>
> * * * * * * *

During this third period, hundreds of thousands of Filipinos sought either to join guerrilla movements or to be employed by the United States Army, or otherwise to "get on the payroll." They account for the large number of claims filed, disposed of, and pending, which will be mentioned under IV, and which have no real part in the case before this Court. In so far as this case is concerned, the statistical data only goes to show the extent to which *our Government did recognize* that the guerrillas recognized by General MacArthur were retroactively recognized as part of the Philippine Army and, as such, *inducted* into the United States Army Forces anew under the Military Order of President Roosevelt of 1941. This time (1944-1946) they were not *inducted* therein as the Philippine Army, but as elements of it, and then either individually or as units, or as forces under various commands recognized by General MacArthur in the period 1942-1944. (Pet. Br. App. Y, p. 63b, and App. GG, pp. 17c-29c.)

III

Philippine Independence—Philippine Army—Acts of Congress

The respondent, as its basic argument, having ignored what the petitioner considers the basic issue, has urged that the

"arrangements" between the United States and the Philippine Army were not such as to imply authority from the United States for the Philippine Army to bind the United States in any manner or to be part, in any sense, of the *armed forces* of the United States.

First, respondent treats of the creation of the Commonwealth of the Philippines, of its largely autonomous character after 1934, under the Philippine Independence Act, of the creation of its Army and of its eventual independence in 1946, in support of the suggestion that, from 1934 to 1946, the Philippines were quasi-independent and to be likened to a foreign country like France—and the Filipinos aliens like the French. Nothing could be further from the facts.

In Appendix HH, p. 30c, the Court will find summarized for its convenience, in parallel columns, the important sovereign powers retained by the United States for the period 1934 to 1946, as compared with the very small quantum of independence granted to the Philippines for that period.

Their true character is set forth in Footnote (1) in *Barber v. Gonzales*, 347 U. S. 638-640.*

The fact is that the United States retained virtually all sovereign powers over the Philippines until 1946, not the least of which was the power to *induct the Philippine Army*, as well as *all Filipinos* (under the act of January 6, 1918, Pet. for Writ, App. A, p. la, the Philippine Independence Act of 1934, the Philippine Constitution and Act No. 1 of the legislature of the Commonwealth of the Philippines) *into*

---

* From the Spanish cession in 1898 until final independence in 1946, the Philippine Islands were American territory subject to the jurisdiction of the United States. See *Hooven & A. Co. v. Evatt*, 324 US 652, 674-676, 89 L ed 1252, 1268-1270, 65 S Ct 870. Persons born in the Philippines during this period were American nationals entitled to the protection of the United States and conversely owing permanent allegiance to the United States. They could not be excluded from this country under a general statute relating to the exclusion of "aliens". See *Gonzalez v. Williams*, 192 US 1, 12, 13, 48 L ed 317, 320, 321, 24 S Ct 177; *Toyota v. United States*, 268 US 402, 411, 69 L ed 1016, 1019, 45 S Ct 563. But, until 1946 neither could they become United States citizens. See *Toyota v. United States* (US) *supra*; 60 Stat. 416.

the armed forces of the United States to protect and defend the United States.

The United States, having the Philippine Scouts already in its armed forces, inducted the remaining Philippine armed forces, the Philippine Constabulary and the Philippine Army, into the armed forces of the United States, in 1941; but in 1945 and 1946, the United States Army inducted individuals, units and commands into our armed forces, *elements* of the Philippine Army, but *not* the Philippine Army.

The Philippine Army was originally unquestionably a separate army, organized and trained under General MacArthur as Military Advisor to the Philippine Government. At that time (1934-1941), it is true that the Philippine Army had no authority to bind the United States. As pointed out above, however, *after* the induction of the Philippine Army into USAFFE in 1941, the Philippine Army, and its officers, under the emergency conditions in the War against Japan, had just as much authority to bind the United States as had any other American officer, who was, or was not, part of the United States Army as defined by Congress. They were all part of the United States armed forces.

It is *not* claimed by petitioner, as intimated by respondent, that the Philippine Army was ever *"merged"* into, or with, the Army of the United States. It *is* claimed by petitioner, and the facts show, that General MacArthur had under his Command the United States Army, a part of the United States Navy, some United States Marines, by enlistment or induction, and the Philippine Army, by induction, all as *sections,* branches, or parts of the United States Army Forces, Far East.

That the two armies, the former Philippine Department, United States Army, and the Philippine Army, operated as separate units is not wholly true. In fact, it is far from true, according to Morton and Cannon, U. S. Army World War II, and the orders which are found in the appendices.

True, the Philippine Army had its own officers, its own insignia; its own uniform, a different scale of pay, etc., but so did the Marines and the Navy, as distinguished from the Army, and different appropriations, too. However, they were *all*, Marines, Navy units, and Philippine Army officers included, under the command of United States *Army* officers. Under King at Bataan, Wainwright at Corregidor, and under the guerrilla leaders named or recognized by General MacArthur, they were all, Marines and Filipinos included, part of one Command—the United States *Army* Forces, Far East, later United States Army Forces, Fil.

True, the Filipino soldiers were defending the Philippines, but they were also defending the United States as nationals of the United States, being nationals of, and having sworn allegiance to, the United States. While the contrary is asserted (Resp. Br. p. 25) the Philippines were still a possession of the United States. Its citizens were our nationals; they owed us allegiance, swore to it and lived up to it.

The respondent next insists that the character of the appropriations determines the status of the Philippine soldier during the period of the war. Why? No reason is given therefor. Nor is there one.

In the first place, an appropriation is not substantive legislation. Its sole function is to appropriate or set apart funds to carry out substantive legislation and obligations of the United States, whether incurred by the Executive or the Judiciary, or determined solely by Congress.

In the second place, there is no rule of any sort to guide Congress as to how it will make its appropriations other than its own rules, which it can change at will. The Constitution merely requires that Congress shall make the appropriations and, of course, they must be for the purposes of government. Congress could have included the Philippine Army in another appropriation, could have broken it down in parts, or could have done as it did, with or without reason. There is nothing whatsoever in the legis-

lative history, other than testimony asking that a separate appropriation be made and the amount required, which indicates in any way *why* Congress made separate appropriations for the Philippine Army. The appropriations most certainly did not determine the status of the Philippine Army as being or not being *in the armed forces of the United States.* They did make for much less bookkeeping on the part of the War Department of the United States. That is certain, but all.

In *USAFFE Veterans Association, Inc., v. The Treasurer of the Philippines, et als,* Civil Case No. 24277, decided January 5, 1946, the Court of first instance in Manila had occasion to consider one of the appropriations mentioned by respondent, which fund was to be disbursed by officers of the Army of the Philippines with the *approval and authority* of the Commanding General, United States Army Forces in the Far East. The litigants sought to have this fund applied to a special purpose as being Philippine money. The Court would have none of it, saying:

> "It is thus seen that even after the transfer of the USAFFE funds to the Government of the Philippines, the United States Government, through the Commanding General of the United States Army Forces in the Far East, retains supervision and control of the disbursements of the accounting of the funds, conditions which are inconsistent with relinquishment of ownership of such funds.
>
> "That the Government of the United States never intended to part with the ownership of the USAFFE funds, but merely constituted the Philippine Government its agent in paying approved claims is further shown by plaintiff's own exhibits. The numerous vouchers and other documents relative to the transfer of the funds to the Armed Forces of the Philippines have not employed 'payment' or 'pay' to describe the transfer. Advisedly, it seems 'advance of funds' under Public Law 353, 77th Congress, and 'Executive Order 9001', 'cash advance' and 'advance', are therein used."

The Court noted that, in the *Logronio* case, the Court did

not hold that the United States Government had divested itself of the ownership of the USAFFE funds in favor of the Philippine Government because the question was not before it.

Furthermore, the unexpended balance of the appropriations became part of the surplus fund of the Treasury of the United States. These funds still belonged to the United States after the appropriation and until their expenditure was approved *by* General MacArthur—representing *our* Government.

All that can be said about the appropriations is that this was nothing but an administrative matter. Congress adopted this way of paying these costs or expenses of our Government.

Respondent then treats the enormous benefits given by Congress to Filipinos who served "in the land and naval forces" of the United States, under the National Service Life Insurance Act of 1940 and the Missing Persons Act, as though these benefits were hardly worth mentioning, asserting that the statute making these laws applicable to Filipinos did not change the *status* of the Philippine Army, or the Filipino soldier, and that the laws show that Congress never intended thereby that the Philippine Army should become a part of the United States Army.

Respondent misconceives petitioner's argument. These laws do not purport to *change the status* of the Philippine Army; they *recognize the existing status*, recognize that the Philippine Army was part of the armed forces of the United States, which is a condition precedent to the enjoyment of the benefits granted by Congress. The benefits are limited to persons who served "in the land or naval forces" of the United States. The Filipinos did, and they received the benefits of the laws applicable to persons who did.

The opinion of the Attorney General (40 Op. A.G. 185), in unmistakable language, recognized this *status*, as the basis for his opinion that the Filipinos *inducted* into our armed

forces, by reason of the induction therein of the Philippine Army, were entitled to the benefits of the National Service Life Insurance Act (Pet. Br. App. BB, p. 80b) and later recognized this *status*, in order to support his opinion that Filipino soldiers, part of the Philippine Army, inducted into USAFFE, were entitled to the benefits of the Missing Persons Act.

The answer to what Congress did, and intended to do, in legislating on the subject, in 1946 and 1947, *just before* and *after* the Philippines became independent, cannot be better expressed than was done by Mr. Justice Madden, when he said in his dissent in *Logronio v. United States*, 133 F. Supp. 395:

"In the Act of Ferbruary 18, 1946, 60 Stat. 14, Congress said:

> '* * * service in the organized military forces of the Government of the Commonwealth of the Philippines, *while such forces were in the service of the armed forces of the United States* pursuant to the military order of the President of the United States dated July 26, 1941, *shall not be deemed to be or to have been* service in the military or naval forces of the United States * * * *for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of* * * * (such service) * * * *except* benefits under (1) (the National Service Life Insurance Act) and (2) (laws providing for the payment of pensions on account of service-connected disability or death).'
>
> [Italics supplied.]

"By the Act of July 25, 1947, 61 Stat. 455, the benefits of of the Missing Persons Act were added to those which Philippine personnel should receive, the House Committee saying that they had been omitted from the 1946 Act by inadvertence.

"This legislation shows a clear *recognition by Congress that Philippine Army personnel were members of our armed* forces. The idea of paying National Service Life Insurance, pensions, and benefits under the Missing Persons Act to

soldiers or the widows of soldiers of our allies is absurd. Congress denied the other benefits such as payments for college education, loans for the purchase of homes or for going into business, etc., because it was not willing to extend those unusual benefits to these residents of a foreign country. Its saying that, for the purposes of the laws conferring these benefits, the service of these soldiers should not be *deemed* to have been service in the military forces of the United States was just a short-hand way of saying that they should not get the benefits. It says nothing, and was intended to say nothing, as to whether, in fact and in law, they were *in the armed forces of the United States.*

[Italics supplied.]

If these persons were not, legally and in the contemplation of Congress, *in the armed forces of the United States,* Congress wrote its law backward. Instead of saying that they *should not,* for the purposes of the laws conferring benefits which Congress did not wish to give them, *be deemed* to be in the armed forces of the United States, Congress would have said that they *should,* for the purposes of the laws conferring the benefits which Congress wished to give them, *be deemed to be in the armed forces of the United States.*"

[Italics supplied.]

Again, in the immigration cases, cited in Petitioner's Brief (pp. 21-24), the Filipino litigants held entitled to the "short-cut" method provided by Congress to achieve American citizenship, one of the greatest rewards our country can bestow, were held so entitled because, as individuals in the organized, recognized *guerrillas, they were in the armed forces of the United States.* These several laws did not change the *status* of the Philippine Army or of the Filipino soldier *vis-a-vis* the United States Army; the Filipino soldiers were accorded the benefit of these laws, because they were American nationals in the armed forces of the United States, American soldiers. They *had* the required *status.*

Nor are the benefits insignificant. It is expected that the

benefits to Filipinos under the National Service Life Insurance Act will cost over one billion dollars. What the benefits under the Missing Persons Act have cost is unknown to petitioner, but they must be respectable in amount.

There must be merit somewhere in the thesis advanced by respondent, but petitioner has been unable to find it. At most, it is only theory, and is comprised of deductions which are not supported by any authority. The authorities cited are authority only for theories advanced having noting to do with this case. The thesis of respondent is most certainly no answer to the clear conclusions which flow, and are required to follow, from the military orders of President Roosevelt, General Douglas MacArthur and officers under him, the Hague Conventions, the Rules of Land Warfare, and pertinent Acts of Congress.

The ultimate conclusion is that the Philippine Army, before the surrender of General Wainwright, in 1942, and after the return to the Philippines of General MacArthur, in 1944, and the recognized, organized guerrillas, in the interim period, were part of the armed forces of the United States in the Philippines, that they at all times had the right to requisition food and supplies for their military operations in the name of the United States Army and to thereby create a debt of the United States, for which the United States is liable, did so, and that the United States is liable to petitioner on account of such requisitions of him, in the sum of $119,765.75, as the "just compensation" guaranteed to him, as a national, now a "friendly alien" of the United States, by the Fifth Amendment to the Constitution: *Russian Volunteer Fleet Corp, v. United States*, 282 U. S. 481, 489-492.

IV

A Judicial Determination is Mandatory—a Right Not to be Denied Petitioner

In *finale*, respondent has urged that this Court be slow to depart from the view of the Executive Branch of the

Government, presumably in a "political" matter. Respondent, in effect, suggests that this Court reverse its action in granting the Petition for the Writ of Certiorari and abdicate its judicial powers.

In support thereof, there are cited cases to the effect that the American courts should not embarrass the Executive arm in its conduct of foreign affairs; that a government recognized by the President, as representative of a foreign state, will be so accepted by the courts; that a decision as to the nation which is sovereign over a piece of territory is left to the Executive; that a certificate by the State Department that a vessel is owned and operated by a foreign government will control in determining immunity from suit; and that where judicial intervention might cause difficulties in the "larger sphere of foreign relations", even the interpretation of treaties contrary to a definite position by the Executive, will not be taken.

No one would think of disagreeing with the principles laid down in the decisions cited. But what have these premises and cases to do with *this* case? None of these situations is here present. This is not a "political" case, nor has the Department of State suggested that it is by a certificate to that effect. That would be unthinkable.

What is, in fact, the position and view of the Executive?

An Army Claims Service, in the Executive branch, was set up to determine, factually, the liability of the United States for claims of Filipinos against the United States. Included within its jurisdiction, by order of General MacArthur, were claims on account of requisitions by recognized, organized guerrillas, who had promised that the United States Army would pay therefor, including the subject claim and claims exactly like it.

Thousands of such claims were filed. Many were decided favorably, i.e., on the basis of the facts.

The Executive view *then* was that such claims should be paid, if valid *in the opinion of the Army Claims Service.*

Petitioner's claim was disallowed. There was *then* no question of "diplomatic" settlement of such claims.

Under the laws of the United States, a Filipino has the right to sue the United States in the Court of Claims, upon an alleged contract breached by the United States, where the Executive branch has disallowed his claim for payment under that contract and has refused to pay. He has a right to a review by this Court, once *Certiorari* has been granted.

Petitioner maintains that his claim, unpaid to date, was based upon a *legal* obligation of the United States to pay. The Court of Claims has denied this, holding that it has no jurisdiction of the claim as a matter of law. Petitioner has asked this Court to review the decision of the Court of Claims *on the law* and to permit him to try the case *on the merits* before that Court, the War Department having declared that he has no valid claim against the United States *on the merits*. His Petition has been granted. A judicial determination would seem to be mandatory.

In 1954, the War Department (Resp. Br. pp. 63-78) asked Congress not to extend the Statute of Limitations, not to extend the time for the filing of claims against the United States, arising out of requisitions by organized guerrillas in the Philippines (Resp. Br. p. 77), pointing out that claimants had had four years within which to file claims with the United States Army Claims Service (until March 31, 1948) (Resp. Br. p. 74), and six years within which to file a suit in the Court of Claims (until September 2, 1951) (pp. 64, 75) and that the *Court of Claims* had held that it *had jurisdiction* of such claims in *Victorio v. United States*, 106 F. Supp. 182, (p. 75). It was noted that in March, 1948, alone, 150,000 such claims were filed, (p. 74). The claim of Soriano was one of them and was summarily rejected like most of the others.

Soriano filed a timely suit in the Court of Claims, but since 1954, when these representations were made, the Court of Claims has changed its position. That Court now holds

that it does not have jurisdiction. *Logronio v. United States, supra.*

Now, the Executive branch is asking this Court not to review the erroneous decision of the United States Court of Claims respecting claims filed and suits brought within the Statute of Limitations, not permit this petitioner to have his day in Court upon the merits of his claim.

Thus, the Executive represented to Congress, rightly, *at that time,* that claims had had their day in Court, but *now* that this is not true, by reason of the decision in *Logronio, supra,* wants to have this right to a day in Court denied claimants who did file timely claims.

Insofar as petitioner is aware, *until this case,* the Department of State has always taken the position that, before it will espouse a claim against a foreign country, based upon a contract, the American national making claim must first exhaust his legal remedies in the foreign country, and before the State Department will consider a claim of a foreign country against the United States, based upon a contract, the legal remedies in this country must first be exhausted. (Hackworth, Digest of International Law, Vol. V, pp. 501-3, 5, 11.)[5] The exception to the rule is where the courts are not open to the claimant. This fact is not present here. The courts are open, and this petitioner is seeking to have a legal determination by our courts before he goes to his country requesting that his claim against the United States be espoused. Is this *no longer the Executive view?* From what view is this Court asked to be "slow to depart"?

The question before the Court of Claims was—is there legal liability of the United States for this claim and others like it, and, if so, does this claimant, in fact, have a claim against the United States, evidenced by proper proof of a requisition, a delivery of the goods and a promise that the United States Army would pay, made by a recognized guer-

[5] See also Great Britain, id, Vol. VII, p. 274.

rilla in the armed forces of the United States, such that the United States is liable?

The Army Claims Service had said "No", on the merits. The Court of Claims has said that it has no jurisdiction to review the facts, because the requisitions involved did not, in law, create a debt of the United States. Petitioner has asked a review by this Court of the legal question so decided, and an opportunity to be heard by the Court of Claims on the merits, and his Petition has been granted.

The respondent now wants to determine the legal and factual questions on a "political" basis, apparently by trading claims *pros* and *cons*, not to have allowed full judicial review to which petitioner is entitled, and which for years has been a *condition precedent* to the "political" consideration of any contract claim by a foreigner against the United States, or by a national thereof against a foreign country.

There are thousands of claims pending in the Department of State between nationals of various foreign countries against the United States, and by American nationals against foreign governments, and there are many thousands of Philippine claims of all kinds that remain today unsettled. What has this fact to do with the issue presented in the subject case?

The State Department is certainly not the place to settle a contract claim against the United States *at this time*, where it is open to judicial review.

As pointed out above, there is no certificate of any sort from the Department of State to acquaint this Court with any "political" activity or power with which a judicial decision would interfere, nor any substantial reason given as to why the question involved should not be judicially determined by this Court.

The crux is perhaps found in respondent's brief, pp. 53 and 54:

> "Petitioner's claim against the Philippine Army received full administrative consideration and was found

> to be without merit (R. 3, 11, 12). If petititoner has a claim it is against the Philippine Government. If he wishes to press that claim, he may do so. If the Philippine Government wishes to honor that claim it, too, may do so. The United States has already given generously both in time and money toward assisting the Philippine Government meet all those claims relating to the expenses of the Philippine Army that appeared to have merit. As with other foreign and economic assistance, this has been handled at the intergovernmental level. Any decision to do more should be made at the same level and should take into account related claims now being considered between the two governments."

This says: "The United States has done enough for the Philippines and for the Filipinos—has passed on this claim on the merits—and even though he has the right to sue, in our courts, petitioner should be denied the right to exhaust his legal remedies, because it will cost the United States money, if he wins."

Petitioner's claim is against the United States Government and not the Philippine Army, as has been fully established by petitioner. The claim received administrative consideration by the United States Army—not the Philippine Army—and was found by the Army Claims Service to be without merit. That is petitioner's complaint and the reason he sued in the Court of Claims.

All claims between governments, at the proper level, are handled by the Executive branch, but it does not follow that, for that reason, a claimant is to be denied access to our courts, when he has the right to go there first.

The manner in which allowed claims or awards against the United States have previously been paid, or are to be paid, whether to the individual direct or to a particular government, on behalf of its nationals, is of no importance.

In the case of claims of American nationals against Germany and Austria-Hungary, and of German, Austrian, and Hungarian claims against the United States, arising out of

World War I, Mixed Claims Commissions, composed of a national of each country and of an umpire, were established, and the claims were adjudicated by these Commissions. Congress then appropriated therefor in the Settlement of War Claims Act of 1928 (45 Stat. 254).

Under that Act, our Government paid funds directly to Germany, who settled with its nationals. The German, Austrian, and Hungarian Governments paid the United States, and our Government settled with its nationals.

While these were adjudicated by Mixed Claim Commissions, rather than by the courts, the principle is no different. They were adjudicated by an impartial, international tribunal, not by the Executive branch of either Government, not by the debtor nation.

How the payment of awards to Filipinos has been, or will be, made, whether by direct payments to successful claimants or by payment to the Philippine Government for distribution, is of no importance, nor is it involved in this case.

In the subject case, there is access to our courts, and petitioner should have plenary access to them.

CONCLUSION

The United States Court of Claims had jurisdiction to hear this case, erred in refusing to do so, and this Court should review the decision below and reverse and remand it for a hearing on the merits.

Respectfully submitted,

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APPENDIX DD

Definitions

As used in Military Orders and by Petitioner:

A "guerrilla" is "one of an *irregular independent* band of partisan soldiers". (Webster.) That definition was undoubtedly taken into account in the Philippines in the distinction made between *organized* guerrillas and *independent* ones, and between *"recognized"* organized guerrillas and those who were not so recognized.

A "recognized" military force (period 1942-1945) is one which was organized under a commander who was appointed, designated, or recognized by the Commander-in-Chief, SWPA, General Douglas MacArthur (See Executive Order No. 21 area commanders of military guerrilla forces during the period Par. 6, for definition, Pet. Br. App. X., p. 60b.). This referred to the recognitions by General MacArthur of the area commanders of military guerrilla forces during the period 1942 to 1944. As they became useful for combat duty, when the American liberation forces returned to the islands in 1944, they were brought into the Philippine Army by Executive Order No. 21 and were then recognized as reactivated units into USAFFE by General MacArthur on paper. Actually, they were already in USAFFE by virtue of his prior recognitions. (Pet. Reply Br. pp. 12-19.)

A "recognized" guerrilla (1944 on, whether recognized as an individual, in a unit, or in a force) is one who, upon recommendation and approval of the Commanding General of the Sixth or Eighth Armies of the United States Army, was recognized by President Osmena beginning October, 1944, and thereafter as an authorized element of the Philippine Army from the date of his becoming a member of an organized guerrilla force until his discharge, and who was

thereupon almost immediately recognized as an authorized element of USAFFE (1944 and thereafter) by General MacArthur.

Guerrillas former members of the United States armed forces had to be returned to full military control, and guerrillas who had not been in such forces had to be inducted first into the Philippine Army and then into USAFFE.

There were two rates of pay:

(1) If recognized, the guerrilla inducted received the current rate.

(2) Guerrillas who had not yet returned to USAFFE received the guerrilla grade at the rate of pay and allowances of the Philippine Army.

APPENDIX EE

Organized Guerrillas
Orders and Recognition — General MacArthur — 1942-1943

HEADQUARTERS
USAFFE LUZON GUERRILLA ARMY FORCES

GENERAL ORDER
No. ..... 1: May 15, 1942

1. The undersigned hereby assumes the responsibility of Commanding Officer of all U. S. Guerrilla forces in the island of Luzon and that of personal representative of General Douglas MacArthur, for the conduct of guerrilla operations and incident affairs. This is in accordance with verbal instructions from Gen. MacArthur on January 20, 1942.

2. All guerrilla leaders on the island shall derive their authority to operate from this Headquarters and shall be duly appointed by the undersigned or his representatives having such authority in writing from the Headquarters.

3. Any person or persons operating as guerrilla in the name of the U. S. A. without the required authority in Par. 2, Supra, will be considered as enemy of the U. S. Government.

4. Any person belonging to the armed forces of the U. S. Government entering into such unlawful operations shall be punishable as provided for under the articles of War of the U. S. A.

5. All persons guilty of looting private property, confiscating supplies or otherwise disturbing the peace of civilians unlawfully by misrepresenting themselves as part of the Guerrilla forces of the U. S. A., will be treated as enemies of the U. S.

6. All guerrilla units bearing proper authority to operate as such are authorized to collect arms and equipments belonging to the U. S. Government from persons unlawfully possessing such arms and equipments.

7. All guerrilla units authorized to operate will be directly responsible thru the district and are under the command of this headquarters.

8. Each area and District Commander receiving this order will be responsible that true copies of this order shall be distributed to all leaders.

For GENERAL MACARTHUR:

C. A. *THORP*
Lt. Col., U. S. A.
Guerrilla Representative
USAFFE

[Italics supplied.]

PKIJC VNDN L June 30, 1942 1230Z

Lt. Col. *NAKAR* [Italics supplied.]

The courageous and splendid resistance maintained by you and your command fills me with pride and satisfaction stop it will be my privilege to see that you and your officers and men are properly rewarded at the appropriate time stop my affection and best wishes.

MACARTHUR
Rec'd. July 1, 1942 — 12:45 A.M.

ML
Official:
(Sgd) FERMIN L. OBINA
1st Lieutenant, 14th Inf.
Executive Officer
dt-

TO: WYZ (*PRAEGER*)
NR: 11 January 23, 1943

Request you report present status of guerrilla units in Luzon CMA paren for *Praeger* from MacArthur number eleven part one paren names of leaders and your advice regarding ways and means of developing unified organization stop please pass word to groups you can contact that general policy at this time is to limit hostilities and contact with enemy to minimum amount necessary for safety stop concentrate on perfecting organization and on development of intelligence net reporting promptly enemy dispositions movements and identification of units cma names of superior enemy officers and other military intelligence items stop until adequate supplies and ammunition can be sent which will take some months part two number eleven offensive activities are premature and will only result in increased enemy pressure and probable retalliation against innocent people

stop acting as our intelligence units the various groups can be currently of utmost value stop nothing is surer than our ultimate victory stop I cannot tell just when it will happen but you can be assured that it is inevitable stop keep up your courage and patience stop an Almighty God will guide us to success.

Not Signed (MACARTHUR)

[Italics supplied]

To: 190517 Z RHK/VSA
Rec'd: 20 Jul 47 1230 Philrycom Dist.
From: CINCFE (changed) Action g-3 (RPD)
To: CG Philrycom Info. AG-PERS
G-1
File
Cite: C 54159 (G-3)

Reurad G 17692 GSXRP 9 July Information Requested is:

"February 8, *1943* for WYZ to Kaznr 14S-162 February 6. *Lt. Martin Moses* 016924 and *Arthur Noble* 017780 arrived here this date. They have been organizing guerrilla units in North Luzon past 9 months. They request authority to *induct* equivalent of L Inf. Regt. their guerrilla units heretofore active now inactive in compliance with your instructions. Request dependents (Praeger to MacArthur) be notified."

[Italics supplied]

TO: WYZ (*Praeger*) *February 12, 1943*

No objection to *inducting* equivalent of regiment (for *Praeger from MacArthur*) provided units can be armed and supplied locally sufficiently to render useful service stop at this time impossible to equip and supply from here stop Moses and Noble dependents notified. [Italics supplied]

February 13, 1943

Subject: Directive

To: District Commanders. P. I.

[Delivered by Lt. Comdr. Parsons]

1. It is the intention to progressively establish territorial command areas based on the Military Districts, in force on December 7th, 1940, for the mobilization of the Philippine Army.

2. Lieutenant Colonel *Macario Peralta,* Jr., P.A., is designated Commanding Officer, 6th Military District.

3. Lieutenant Colonel *W. W. Fertig,* C. E., A.U.S., is designated Commanding Officer, 10th Military District.

4. It is directed that there will be maximum co-operation, mutual support and the avoidance of friction between Commanding Officers of Military Districts operating in a common cause.

5. The assignment of command over other Military Districts, will be made from time to time, as conditions warrant.

6. Until otherwise directed, the Commanding Officers of Military Districts will function under direct control of this Headquarters.

7. These command assignments are made on a tentative basis, and may be reviewed upon further information and individual record of performance.

8. The District Commanders, 6th and 10th Districts, will continue to perfect their intelligence nets, in their districts, and establish liaisor with organized forces in adjacent Districts. In order to prevent uneconomic duplication, Colonel Peralta and Fertig will develop a co-operative scheme of operations in the establishment of military intelligence net as follows:

Lieut. Colonel Peralta: 6th, 7th and 8th Districts.

Lieut. Colonel Fertig: 9th and 10th Districts.

9. These intelligence nets constitute at this time the main

mission of our Commanders; their installation and personnel should receive the greatest care; the organization should be based on the P.A. Military District and Provincial Areas therein, utilizing loyal Army and P.C. personnel, if practicable.

Information is generally desired in the following order of priority:

1. Enemy strength and dispositions:
   a. Occupied seaports.
   b. Occupied cities, towns and villages.
2. Enemy identifications: captured documents, etc.
3. Enemy operational air-fields.
   a. Number and type of planes hangars, fuel tanks, etc.
   b. Disposition of guard troops and A/A defenses.
4. Enemy movements, transfer of troops, etc.
5. Enemy naval dispositions.
6. Enemy treatment of civilians.
7. Enemy civil administration.

By command of General MacArthur:

R. K. SUTHERLAND
Major General, U. S. A.
Chief of Staff.

Official:

VAN S. MERLE-SMITH,
Colonel, G.S.C.,
Acting A.C. of S., G-2,

Distribution:

C. O. 6th Military District.
C. O. 10th Military District.
G. H. Q., S. W. P. A.

[All italics supplied]

HEADQUARTERS USFIP OF NORTHERN LUZON
IN THE FIELD

March 21, 1943

Certificate

1. This is to certify that, pursuant to authority granted by and contained in radiogram MacArthur to Moses, Number 20, dated February 14, 1943, I have this date administered Oath of Allegiance to the United States of America to, and announce the promotion of Major Ali Al-Raschid, PA, ASN No. 1444, Infantry, USFIP, to the grade of Lieutenant Colonel, USFIP.

2. The signature of Lieutenant Colonel Ali Al Raschid appears below.

(Signed) Martin Moses
(Typed) MARTIN MOSES
Lieut. Col., Infantry, USFIP
Commanding

Witness:
(Signed) Arthur K. Noble
(Typed) ARTHUR K. NOBLE
Lieut. Col., Infantry, USFIP

(Signed) Ali Al Raschid
(Typed) ALI AL RASCHID
Lieut. Col., Infantry, USFIP

To: *Praeger* [Italics supplied] July 19, 1943
From: MacArthur
NR: 12 (2 Parts)

Enlistments authorized to maintain C troop twenty sixth Cav at strength one hundred with original ratings using serial numbers one nought six four seven nought seven nought to one nought six four seven one seven nought RPT one nought six four seven nought seven nought to one nought six four seven one seven nought INCL PD enlist in Army of United States PA maintain record names CMA serial numbers and date enlistment but omit radio report thereof PD twenty RPT twenty sergeants authorized espionage EM PD appropriate grades authorized APAYAO CO PD promote deserving ATCD EM to appropriate NCO grades own organizations PD as specialist ratings now abolished use appropriate grades throughout increasing number to include former ratings.

RADIO MESSAGE RECEIVED — TUT
NR — 40

Time: 5:45 PM *August 28, 1943*

To: *Col. Kangleon*

To *Col. Kangleon from Gen. MacArthur* quote . . . The progress that has been made your leadership in maintaining law and order in area of Ninth Military Dist. has been noted with great satisfaction. When decision to reactivate the Ninth Military Dist. HQ. has been reached, your fine efforts will be given full consideration (Part two) in appointing its commander. *Until the time that I shall return and require active support* you will continue to quietly organize and give protection and encouragement to the people. Maintain a mobile defense but you should exercise every precaution to avoid every employment of your force. (Part three) That would tend to disturb the present quiescent state of

enemy activity within *Samar and Leyte.* I shall make every effort to forward supplies requested in your memorandum to *Comdr. Parsons.* The unswerving and stead-fast devotion of the good people of Leyte and Samar to the principles and ideals to which we all owe common (Part four) allegiance maintained in spite of existing adversities of which I am full conscious and which commands my deep admiration and is an inspiration for all oppressed peoples everywhere. End.

GEN. MACARTHUR

[Italics supplied]

GENERAL HEADQUARTERS
SOUTHWEST PACIFIC AREA

Subject: Appointment October 21, 1943

To: *Major Ismael Inginiero,* P.A.

1. This will confirm your appointment by me as *Commander, BOHOL* Area Command, embracing all loyal forces on the Island of BOHOL.

2. I desire that you establish and maintain direct communication with this headquarters at your earliest opportunity and that thereafter you keep me informed of major developments involving enemy movement, dispositions and other activity within your area and observation.

3. *This letter will be presented to you by an officer representing me who will, at the same time, hand you signal operating and cryptographic instructions under seal, and outline to you my general policies with respect to the future exercise of the command to which I have appointed you.* He will further arrange for delivery to you of signal equipment, ordnance, medical and other supplies of which your command is in urgent need and discuss with you my plans for future supply.

4. I desire that in your area the immediate future be de-

dicated to quiet organization and intelligence activity, exercising all possible precautions against unnecessarily provoking the reinforcement of enemy garrisons and retaliations upon the people. You will, as far as possible, *harmonize your acts as military commander with my other commanders in the Philippine area, whose identities will be made known to you by my representative*, to the end that all may work in cooperative effort toward the common goal, and you will reinforce and safeguard the integrity of the loyal civil government functioning in BOHOL and work in complete harmony and co-operation therewith.

5. Needless to say, the success of your mission will depend in large measure upon farsighted and aggressive leadership on your part and the maintenance of absolute secrecy surrounding your dispositions and the interchange of communication with this headquarters.

6. In the discharge of your responsibilities of command, do no hesitate to call upon me at any time for counsel and direction.

(Signed) Douglas MacArthur
(Typed) DOUGLAS MACARTHUR,
General, U. S. Army
Commander in Chief.

[Italics supplied]

APPENDIX FF

Recognized Guerrillas — General MacArthur [1]

Allied Intelligence Bureau, G-2, GHQ, SWPA.

a. AIB was organized *6 July 1942* to train, equip, and dispatch agents for the procurement of intelligence in the Southwest Pacific Area, thru clandestine operations behind the enemy lines. It was established under the terms of a directive agreed to by the United States, the Commonwealth of Australia, and the Netherlands East Indies. As an inter-Allied agency, AIB's costs were shared equally, agents were centrally trained, and parties were equipped and dispatched with the combined means at the disposal of the Allies. The trilateral nature of the organization was evidenced by the geographical subdivisions initially established for the operations of AIB's combined field intelligence. Chiefly to accommodate pre-war political sovereignties, the SWPA theater was divided into the North East Area (east of the east boundary of the SWPA), the Netherlands East Indies Area, and the Philippine Archipelago Area. This division took cognizance of the fact that the paramount interests were, respectively, Australian, Dutch, and American.

b. From its beginning, AIB began planning for Philippine intelligence penetration. As a result of GHQ's desire to retain a direct and personal relationship with Philippine planning and operations, a special Philippine Sub-section of AIB was formally set up on *21 October 1942*. A directive stated the section's mission and the methods it should use.

(1) MISSION-To:

a. Reestablish a net for military intelligence and secret service throughout the Islands.

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[1] Unpublished historical summary of recognition program of Philippine guerrillas, Philippine Command, United States Army.

b. Establish a chain of communication, both local and to Australia.

c. Establish an eventual "escape route" to serve those it is desired to evacuate in the interest of future planning, etc.

d. Develop an organization for covert subversive activities and propaganda for use at the appropriate time.

(2) METHOD-To inaugurate operations through:

a. The medium of an initial picked reconnaissance party, which shall be transported to the Islands by air or submarine.

b. The formation of and penetration by successive parties organized and operated on the basis of the findings of the "Preliminary Party."

The Preliminary Party shall consist of *Capt. J. A. Villamor,* leader, and two or three very carefully chosen men whose task will involve the most covert type of survey operations, to:

a. Locate and contact certain individuals known, or strongly considered to be loyal and desirous of giving assistance, immediate or eventual.

b. Establish through these the regiments of the *intelligence* net, which shall be formulated upon the "cell" system for the mutual protection of Capt. Villamor and party against possible betrayal, and of loyal assistants in the Islands against betrayal by unfortunate contacts.

c. Determine means of obtaining such essentials as: aviation fuel, food, small boats, small boat supplies, passes and identifications, etc., for subsequent parties.

d. Locate radio equipment and listening stations.

e. Locate Bureaux of Posts and old Philippine Army transmitters and their operating frequencies.

f. Obtain general information on: Japanese political intentions, military intentions, civil intentions, military strength, dispositions, quality, equipment, morale, etc., and Japanese operations of future significance.

g. Arrange the channel through which this information is to be passed for compilation by Capt. Villamor.

h. Establish a portable radio transmitter for contacting Darwin on matters of arranging transportation rendezvous only.

i. Establish *Capt. Villamor's assistant agents* in suitable location of maximum value consistent with security.

j. Return Capt. Villamor to Australia with full report and recommendation for future parties.

c. AIB had no jurisdiction over guerrillas in the matter of recognition; as stated in 4, above, recognized guerrilla groups were under the direct control of GHQ, SWPA. However, AIB as GHQ's "mouth-piece" did inform guerrilla leaders of specific intelligence missions assigned to them. For instance, when *Col. Fertig* was appointed commander of the 10th MD (Mindanao) in February 1943, the 9th MD (Leyte-Samar) was also assigned to him for intelligence purposes, with the understanding that a commander would be appointed to that district as soon as sufficient information regarding local leadership was available to justify an appointment. *Fertig's* instructions directed him to perfect his organization on *Mindanao* and then to develop his intelligence net there and in the *Leyte-Samar area.*

d. Penetration parties sent to the Philippines under the auspices of AIB were:

Personnel	Date	Area Landed
Maj. J. A. Villamor 1st Lt. R. C. Ignacio 2nd Lt. E. F. Quinto 2d Lt. D. O. Yuhico Sgt. P. Jorge Sgt. D. Malic	*27 Dec. 42*	*Negros*
Lt. Comdr. C. Parsons Lt. Col. C. M. Smith Pvt. E. S. Catalina Pvt. H. H. Bairulla Pvt. S. H. Bairulla	14 Feb. 43	Mindanao (Parsons also made a side trip to Leyte and Panaon Island)

Personnel	Date	Area Landed
Lt. T. Crespo Sgt. O. Alfabeto Pvt. A. Lajahasan Pvt. M. Lajahasan	12 Apr. 43	Panay
Capt. J. A. Hamner Lt. Frank Young Pvt. S. M. Aliacbar Pvt. J. H. Lajahasan Pvt. L. B. Nastail	27 May 43	Mindanao (Hamner and Young went on to Tawi Tawi)
Lt. I. O. Ames Sgt. J. J. Ramos Sgt. F. R. Gingobiagon	31 Jul. 43	Panay

e. Lt. Comdr. Charles Parsons ably served first with AIB and as chief of its supply service. He was instrumental in developing naval support by the 7th Fleet and later served with PRS. * * * [Philippine Regional Section.]

* * * * * * *

II. **The Philippine Regional Section**

a. The Philippine Regional Section (PRS) was established 16 Apr. 1943, in an AIB organization of which one objective was "to emphasize responsibility of the regional sections.' Accordingly, three geographical subdivisions of Section C (see Ia above) were redesignated as the Northeast Regional Section, the NEI Regional Section, *and the Philippine Regional Section.* Mission of the Section remained unchanged, but the time was ripe for great expansion of its activities, which would require specialized operational control. The attention of G-2 was heavily oriented toward the active Japanese fronts. Col. Whitney, a pre-war resident of Manila, formerly an officer in the Air Corps, resigned to develop an important law practice in Manila. Col. (later Gen-

eral) Courtney Whitney assumed the direction of PRS on 24 May 1943; the section's responsibility underwent a marked change. Although nominally a part of AIB, and still depending largely on AIB for procurement and supply functions, PRS achieved a semi-independent status, reporting direct to the Chief of Staff, but coordinating through G-2. General Whitney's service and administration were of the highest order and achievement.

PRS was in charge of Philippine intelligence activities during the peak year, July 1943/June 1944. During the same period, G-2 carried on its own specialized participation in Philippine affairs—preparation of staff studies for planning and orientation purposes, compilation of a Philippine Intelligence Guide for agents and guerrillas, and dissemination to interested staff sections of daily, weekly, and monthly publications containing evaluated operational information obtained from guerrilla intelligence reports.

By mid-1944 the scope and scale of Philippine activities had expanded to the point that closer participation by staff sections was desirable in order to secure proper coordination with other SWPA operations. An order effecting the dissolution of PRS as it was then organized was issued on GHQ Staff Memo No. 18, dated 2 June 1944. Under this order PRS was split into the Philippines Special Section of G-3, GHQ and the Philippine Special Section of G-4, GHQ. Direction of guerrilla activities and movements of intelligence personnel passed to G-3; intelligence matters were more closely supervised by G-2; and supply became the responsibility of G-4. Col. Whitney, whose talent, energy and ability were recognized, was retained as the active head of PRS, although he was assigned specifically to G-3. PRS activities continued on an ever-increasing scale until the time immediately preceding the invasion of Leyte.

[Italics supplied.]

APPENDIX GG

Miscellaneous Orders of Retroactive Recognition of Organized Guerrillas December 1944 — November 1945

(See also Pet. Br. App. Y, p. 61b)

HEADQUARTERS SIXTH ARMY
OFFICE OF THE COMMANDING GENERAL
APO 442

December 20, 1944

Subject: Official Recognition of Guerrillas.

To: Commander-in-Chief, South West Pacific Area, APO 500.

1. Request that a directive be published clarifying the policy to be followed in extending official recognition to guerrilla units.

2. It is understood that to date no guerrilla forces on LUZON have been officially recognized by this Theater.

3. *Guerrilla groups on MINDANAO, LEYTE and PANAY have been extended such recognition with consequent emolument in rank and pay.* It is believed that unless some similar recognition is extended to a certain group or groups on LUZON it may cause resentment and handicap the unification of the guerrilla forces there. [Italics supplied.]

For the Commanding General:

(Signed) G. H. Decker
(Typed) G. H. DECKER,
Brigadier General, G.S.C.,
Chief of Staff

BASIC: Ltr. C.G. 6th Army to Cin C SWPA, 20 Dec. 44, subj.. Official Recognition of Guerrillas.
AG 370.64 (20 Dec. 44)C 1st Ind.

GENERAL HEADQUARTERS
SOUTHWEST PACIFIC AREA
APO 500

December 27, 1944

To: Commanding General, SIXTH U. S. Army, APO 442

1. The formal recognition of guerrilla units operating in LUZON presents a very different problem than that prevailing on major Islands to the South. Such action in the South resulted from an entirely different military situation than has existed under enemy occupation in LUZON. Thus vast areas, never under the physical occupation and control of the enemy in MINDANAO, PANAY and NEGROS, for example, *permitted the organization and arming of regularized military forces and their commitment to guerrilla warfare,* military intelligence and other interior activity under the direction of this Headquarters.

2. This was not possible in LUZON due to the widespread garrisoning of the area by vastly greater enemy occupying forces. As a consequence the resistance movement in LUZON has been confined to the classic type of underground operations in which an entire population, with little exception, has participated with patriotic fervor. These operations have extended into every center of enemy activity and have resulted in providing information in most precise and detailed form on enemy dispositions throughout the Island.

3. It is anticipated that this great patriotic movement among the people of LUZON will reach its maximum strength and utility after the battle for LUZON has been joined and it is the desire of the Commander-in-Chief that it be utilized to maximum advantage.

4. *The service, past and future, of unsurrendered, escaped or released members of USAFFE, will certainly ultimately be recognized on* the merits of each case, as will the service of civilian patriotic secret societies, groups and individuals, but *it is desired that for the purpose of the campaign the movement in so far as practicable be treated and directed as a sponstaneous patriotic effort on the part of the whole people.*

By command of GENERAL MACARTHUR:

(Signed) B. M. Fitch
(Typed) B. M. FITCH
Brigadier General, U. S. Army
Adjutant General

[Italics supplied.]

HEADQUARTERS
WESTERN VISAYAN TASK FORCE
APO 321

December 29, 1944

Subject: Recognition of Guerrilla Leader on Mindoro.
To: Commanding General, Eighth Army, APO 442.

1. Reference is made to Annex 9 to FO 33, Hq, Sixth Army, dated 20 Nov. 1944. Under provisions of the above, Commander, Western Visayan Task Force, is authorized to utilize existing guerrilla forces to conduct certain tactical operations. However, no specific authority is granted to recognize or temporarily appoint a guerrilla leader nor is provision made to issue to guerrilla forces such weapons as may be required for the conduct of assigned missions.

2. I have found two factions of guerrillas in Mindoro. A group commanded by Major *Ruffy*, PC, has been operating in the northeastern portion of the island. This group is regarded highly by all inhabitants. Major Ruffy, former Constabulary Inspector at Mindoro, is highly respected for his honesty and trustworthiness. Small detachments under

Colonel Peralta's command in Panay have been operating around the San Jose area. These detachments have not been overly popular with the inhabitants. As a result of previous clash between these two forces they are at present operating within their own defined zones of actions. My investigations indicate that Major Ruffy's force is the most capable and trustworthy of the two factions and I believe there could be no better course of action than to appoint Major Ruffy in command of guerrilla forces on Mindoro. However, I have made no announcement or statement as to present or eventual appointment of a guerrilla leader on this island.

3. It is my desire to utilize to the maximum all guerrilla forces on this island. In order to do this efficiently, control of guerrilla forces should be contralized under one dependable leader; arms and ammunition should be made available to equipment his forces as required, and a specific policy be adopted as to their military status in order that pay may be effected on some definite basis.

4. It is therefore requested:

a. *That I be authorized to appoint Major Ramon Ruffy,* 01128 PC (USAFFE) *as commander of guerrilla forces in Mindoro.*

b. *That I be authorized to requisition arms to issue to guerrilla forces, or I be directed to a specific source for immediate requisition and supply of weapons needed.*

c. That I be given a definite policy as to the payment of guerrilla forces that I employ on tactical missions.

5. Please advise at the earliest practicable date the action to be taken on the above question. [Italics supplied.]

W. C. DUNCKEL,
Brig. Gen. USA,
Commanding.

Subject: Recognition of Guerrilla Leader on Mindoro.
AG 370.65 (d)
(29 Dec. 44) 1st Ind

HEADQUARTERS EIGHT ARMY
UNITED STATES ARMY, APO 343

To: Commander-in-Chief, General Headquarters, Southwest Pacific Area, APO 500.

The recommendations of General Dunckel are approved. The present situation of MINDORO makes it desireable to recognize immediately Major Ramon Ruffy in order that supplies may be requisitioned, that the guerrilla troops be paid, and that law and order on the island be safe-guarded.

R. L. EICHELBERGER,
Lieutenant General, United States Army, Commanding.

Certified True Copy:
DOUGLAS C. MURRAY
Major Infantry
(10 Oct. 47)

Note: Major Ruffy, previously recognized, was again recognized, *on paper*.

AG 370.64 (29 Dec. 44)C 2nd Ind

GENERAL HEADQUARTERS
SOUTHWEST PACIFIC AREA
APO 500

January 25, 1945

To: Commanding General, EIGHTH US Army, APO 343.

1. The recognition of the guerrilla forces on MINDORO and their employment as such by the Commanding General,

Western VISAYAN Task Force is not favorably considered.

2. Following established policy, however, there is no objection to the calling upon Major Ruffy and any other officers and men on the island who are in the *Philippine Army, Philippine Scouts or Philippine Constabulary for such active service as may be required of them.* [Italics supplied.]

By command of General MacArthur:

B. M. Fitch
Brigadier General, U. S. Army,
Adjutant General.

Subject: Recognition of Guerrilla Leader on Mindoro.
AG 370.64 (d) (29 Dec. 44) 3d Ind.

HEADQUARTERS
EIGHTH ARMY, U. S. ARMY, APO 343

To: Commander-in-Chief, Southwest Pacific Area, APO 500.

1. Request clarification of 2nd Indorsement.

2. Paragraph 3 a (3), GHQ Operations Instructions No. 74, dated 13 October 1944, directs Commanding General, Sixth Army, to "assume control of and direct the operations of the PHILIPPINE Forces in MINDORO." Operations Instructions No. 82, dated 17 December 1944, directs Eighth Army to assume duties and missions assigned to Sixth Army by Operations Instructions Nos. 74 and 80.

3. GHQ Staff study GEORGE states that the Army Commander of the designated Task Force Commander shall assume control of and direct operations of all *guerrilla forces* and friendly groups in operations in the Philippines. Paragraph 2, 2d Indorsement, apparently limits the personnel which can be employed to members *of the Philippine Army, Philippine Scouts, or Philippine Constabulary.*

4. The references cited above appear to conflict with paragraph 2, 2d Indorsement. Request clarification as to the policy

to be followed in MINDORO and in other areas under jurisdiction of Eighth Army.

For the Commanding General:

C. E. BYERS,
Brigadier General, General Staff Corps, Chief of Staff.

HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST

APO 501
April 24, 1945

FEGA (PA) 370.64

Subject: Recognition of Guerrilla Forces.
To: The Commanding General, United States Army Services of Supply, APO 707.

1. It has come to the attention of this headquarters that United States Army units formerly attached to or under the control of the Commanding General, Sixth Army, have utilized personnel of guerrilla units during that period. Subsequently the above mentioned United States Army units have been attached to your headquarters and have retained the guerrilla personnel in their service.

2. The Commanding General, Sixth Army, is charged with the control of all guerrilla forces on Luzon, and the Commanding General, Eighth Army, with the control of all others. Therefore it is desired that you submit a report to the Army commander concerned containing the following information:

a. Designation of guerrilla units utilized by United States Army units under your control. *Those units which in your opinion warrant recommendation for recognition by the Commander-in-Chief as authorized elements of United States Army Forces in the Far East should be indicated.*

[Italics supplied.]

b. Rosters of all personnel designated under 2a above.

c. Inclusive dates that the guerrilla unit was actually attached to or employed by United States Army units under your control.

3. Individuals now attached to or in the service of United States Army Service of Supply units who are United States Army Forces in the Far East personnel but who are not members of guerrilla units recommended for recognition, will be furnished transportation to the nearest Philippine Army Replacement Battalion for processing. *Guerrilla personnel of units designated under par. 2a above and not recommended for recognition, and who do not belong to the Armed Forces of the Armed Forces of the United States will revert to civilian status.* When paid, the rate of pay for those reverting to civilian status will not exceed rates set for the Philippine Army. [Italics supplied.]

4. In instances where services of personnel of a guerrilla unit recommended for recognition are no longer required, such personnel will be quartered and rationed by the United States Army unit until action is taken by this headquarters on the recommendation for recognition. When action is taken by this headquarters recognizing the recommended guerrilla unit, the United States Army unit to which it has been attached will take action to dispose of the guerrilla personnel of the recognized unit in accordance with the provisions of letter, Headquarters, USAFFE, File FEGA 370.64, dated 8 April 1945, Subject: "Relief from Active Duty or Discharge of Guerrilla Personnel," copy attached.

5. Inclosed for your information is copy of letter to the Commanding General, Sixth and Eighth Armies, Subject: "Recognition of Guerrilla Forces."

By command of General MacArthur:

JAMES A. CALLENDER
Capt. A. G. D.
Asst. Adj. General

2 Incls.
As indicated

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

AG 323.361 (1 Nov. 45) DSSO APO 500
November 1, 1945

Subject: Matters Pertaining to the Philippine Army
To: Commanding General, United States Army Forces, Western Pacific, APO 707

1. Effective 5 November 1945 you are charged with the responsibility for, and authorized to act on, all United States Army matters pertaining to this Philippine Army and the Philippine Commonwealth Government. The following tasks are included among these matters:

a. Execution of Philippine Army demobilization plans as set forth in the revised Plan for Demobilization of Philippine Army, attached.

b. Preparation and conclusion of arrangements for the release of units to be turned over to the Philippine Government on 30 June 1946. In this connection you will be guided by policies set forth in the revised Plan for Post-War Philippine Army, attached.

c. Arrangements of details in connection with the enlistment of Philippine Army personnel in the Philippine Scouts under the 50,000 Scout project now being developed by the War Department.

d. Recognition of additional guerrilla units or individuals for the purpose of entitling them to benefits for service rendered.

e. Handling of finance matters pertaining to the Philippine Army. In this connection, authority is being delegated to you by separate communication to approve the allocation of funds from United States appropriations for use by the Philippine Army.

2. In order to assist you in the accomplishment of the above tasks, orders will be issued without delay to transfer to your

command such personnel of the *Philippine Army Section, United States Army Forces,* Pacific as you may desire, and the United States Army Training Group.

[Italics supplied.]

3. Action is also being initiated to transfer to you authority to make final determinations under the Missing Persons Act, in cases involving personnel of the Philippine Army. When this action is completed, it is contemplated that the Recovered Personnel Division, Adjutant General Section this headquarters and the Recovered Personnel Detachment, United States Army Forces, Pacific will be transferred to your command.

By command of GENERAL MACARTHUR:

B. M. FITCH,
Brigadier General, U. S. Army,
Adjutant General

2 incls:
Incl 1-Revised Plan for demobilization of P.A.
Incl 2-Revised Plan for Post-War Philippine Army

Note:

In the process of the Luzon operations, Sixth Army recovered and utilized the services of some 150 guerrilla units representing approximately 75,000 officers and men. Under Executive Order No. 21, issued by the President of the Philippines on 23 October 1944, these guerrilla units could have no status as units of the Philippine Army unless formally recognized by the Commander-in-Chief. To expedite such recognition the following instructions were issued by Commanding General, Advanced Detachment, USAFFE, to Commanding General, Sixth Army, on *16 February, 1945* (Msg Cen NR UAD X 62592):

"It is desired as rapidly as practicable to induct into the Philippine Army those Guerrilla elements who have

been or are being employed or whom you believe it is desirable to employ in support of our combat operations on Luzor. *They may be inducted into service as groups or individually as you deem expedient . . .*"

[Italics supplied.]

HEADQUARTERS SIXTH ARMY

Office of the Assistant Chief of Staff, G-2
Special Intelligence Sub-Section
APO 442

370.64-B May 16, 1945
Subject: Recognition of Guerrilla Units

To: Commanding Officer
Rizal Guerrilla Group
c/o Headquarters, 43d Infantry Division
APO 43.

1. The following guerrilla units are recognized by the Commander-in-Chief, Southwest Pacific Area, *as authorized elements of the United States Army Forces in the Far East,* effective as of the date specified after each unit listed:

Yay Regiment, Marking's Fil-Americans:

Hq 2d Bn	13 Mar. 45
Hq 3d Bn	13 Mar. 45
Cos D, H, M	13 Mar. 45

* * * * * * *

2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 28 October, 1944, the status of members of these units is that of officers and enlisted men of the Philippine Army.

3. When there is no further immediate need for the employment of these units in combat, arrangement will be

made for their transportation to one of the following points for reorganization and equipment by Philippine Army agencies:

Camp Calasiao, Pangasinan
Camp Olivas, Pampanga
Camp Murphy, Rizal

(Signed) W. W. Sturart,
(Typed) W. W. STURART,
Captain, CAC,
Asst. AC of S, G-2.

[Italics supplied.]

APPENDIX HH

"Sovereignty" of Philippines 1934-1946 under the Philippine Independence Act of 1934

Powers retained by the United States to July 4, 1946 (Mandatory Provisions)	Powers granted Commonwealth Government 1934 to July 4, 1946
(1) All citizens of the Philippine Islands owe allegiance to the United States.	(1) The Commonwealth is permitted to adopt a Constitution, subject to the mandatory provisions of the Independence Act.
(2) Every officer of the Commonwealth shall take and subscribe oath of office declaring that he recognizes and accepts the supreme authority and will maintain true faith and allegiance to the United States.	(2) The Commonwealth is permitted to elect a legislature and officers under the supervision of the Governor General.

(3) Religious tolerance is secured.

(4) Property owned by the United States, religious properties, etc., are exempt from taxation.

(5) Trade relations with the United States are to remain, except as to sugar, cocoanut oil and hard fibers, with quota exemptions, and then duties are to be paid on the balance. (See (5), other column.)

(6) Public debt of the Philippine Islands may not exceed limits now or hereafter fixed by the Congress of the United States and no foreign loans may be made without the approval of the President of the United States.

(7) Provision is made for adequate public schools, to be conducted in the English language primarily.

(8) All acts affecting coinage, imports, exports and im-

(3) The Commonwealth is given "autonomy" in local affairs consistent with the Constitution, subject to its mandatory provisions.

(4) Philippine citizens who previously had been nationals of the United States but not citizens are treated as aliens for purposes of immigration and naturalization and may become citizens of the United States in limited numbers.

(5) Filipinos shall pay customs duties to the United States on sugar, cocoanut oil and hard fibers, exported to the United States in quantities in excess of fixed quotas.

(6) All existing debts and obligations of the Philippine Government and its instrumentalities are to be assumed and paid by the new government.

migration become law only upon the approval of the President of the United States.

(9) Foreign affairs are under the direct supervision and control of the United States.

(10) All acts of the Commonwealth Legislature must be reported to the Congress of the United States.

(11) The United States has the right to expropriate property for public uses, to maintain armed forces in the Philippines and to call into the service of such armed forces all military forces organized by the Commonwealth.

(12) All decisions of the courts of the Commonwealth are subject to review by the Supreme Court of the United States.

(13) The United States, by Presidential proclamation, has the right to intervene to preserve the government of the Philippines and to maintain law and order, to protect life, property and individual liberty.

(14) The authority of the United States High Commissioner is recognized.

(15) Civil rights of citizens

and corporations of the United States are recognized to be equal to those of Filipinos.

(16) The Constitution of the Commonwealth had to be submitted to the President of the United States for a determination as to whether it conformed with the Independence Act.

(17) The elections of officers were under the supervision of the Governor General of the Philippine Islands, named by the President of the United States.

(18) Laws then in force, or to be enacted, continued in force in the Commonwealth until altered, amended or appealed by the Legislature of the Commonwealth or the Congress of the United States.

(19) The High Commissioner has access to all records of the government.

(20) The President of the United States has authority to suspend the taking effect of the operation of any law, contract or executive order of the Commonwealth respecting its obligations, currency or possible interference with international relations of the United States.

(21) Every duly adopted amendment to the Constitution of the Commonwealth shall be submitted to the President of the United States for approval.

The continued sovereignty of the United States over the Philippines from 1934 to 1946 cannot be questioned, despite their being given a modicum of experimental independence during that period. The virtually complete sovereignty of the United States, until July 4, 1946, is best illustrated by the fact that, while Manuel Quezon was elected President and Sergio Osmena Vice President, under the Constitution of the Commonwealth, on November 15, 1935, under Section (5) of Article VII, this provision was amended with the approval of the President of the United States to extend the term from six years to eight, and, as the eight-year term was about the expire, on November 14, 1943, the Congress of the United States, by Joint Resolution, notwithstanding the Constitution of the Commonwealth, continued them in office. Quezon died August 1, 1944, and Osmena took the oath of office as President of the Commonwealth, thus pursuant to an Act of the Congress of the United States, at Washington, D. C., on August 1, 1944. He then became Commander-in-Chief of the Philippine Army by reason of an Act of the Congress of the United States, not by reason of the Constitution of Commonwealth of the Philippines.

APPENDIX II

U. S. Army in World War II

The Fall of the Philippines, (Excerpts in addition to those in App. S. Pet. Br. p. 24 (b) et seq.)
Morton,
Page 88.

"Thus, after one day of war, with its strength cut in half, the Far East Air Force had been eliminated as an effective fighting force . . . The conclusion of the Joint Congressional Committee which investigated the Pearl Harbor attack, that it was the greatest military disaster in American history, is equally applicable to the Philippines."

Page 583.

"But the Pacific fleet, which was to have fought its way through to them by that time, never arrived. The fate of the Philippine garrison had been decided on the opening day of the war, at Pearl Harbor."

Pages 462-463.

"Regretfully General Wainwright wrote to MacArthur:

'At 6 o'clock this morning *General King . . . without my knowledge or approval sent a flag of truce to the Japanese commander.* The minute I heard of it I disapproved of his action and directed that there would be no surrender. I was informed it was too late to make any change, that the action had already been taken . . . Physical exhaustion and sickness due to a long period of insufficient food is the real cause of this terrible disaster. When I get word what terms have been arranged I will advise you.'

"For General King, Wainwright had no criticism. 'It has never been and is not my intention to reflect upon General King,' he later told MacArthur, 'as the decision which he was forced to make required unusual courage and strength of character.' Soon he would be forced to make the same decision."

Page 562.

"Unlike *General King, who had been forced to violate his instructions* and keep from his superior any knowledge of his decision to surrender the Luzon force, Wainwright was able to make his decision unhindered by restrictions from higher headquarters. He had not always had this freedom of action.

Until 9 April he had been bound, as had General MacArthur before him, by President Roosevelt's order "to fight as long as there remains any possibility of resistance."

Morton, Page 562 (contd)

On that day, the day of General King's surrender, *the President modified this order and gave General Wainwright full authority to act on his own judgment.*

"*General MacArthur had given contrary instructions,* and his failure to transmit these instructions to Wainwright was in effect a "non-concurrence" of the President's message, which remained on his desk." (Page 563.)

[All italics supplied.]

Cebu

Page 502.

Perhaps the most interesting feature of the preparations for the defense of the Visayas was the program known as Operation *Baus Au,* Visayan for "Get it Back." Initiated by General Chynoweth during his tenure as the commander of the Panay garrison and then adopted on Cebu, Operation *Baus Au* was the large-scale movement of goods, supplies, and weapons into the interior for use later in *guerrilla warfare.*

Page 579.

Of all the island commanders none was better prepared for guerrilla operations than the Panay commander, Colonel Christie. * * *

Colonel Christie persisted in refusing to accept Sharp's order, arguing, first, that it was unnecessary, second, that it would have an adverse effect on the civil population, and third, *that he doubted the authority of either General Wainwright or General Sharp to order his surrender.* He felt that to comply with Sharp's directions would "tend toward treason," and questioned whether the surrender of one island meant the automatic surrender of others. "I strongly urge you," he told General Sharp, "to have the approval of the

War Department through MacArthur," adding that he intended to consult his immediate commander, General Chynoweth. He closed his message with a plea. "In this delicate situation please do not issue me any peremptory orders that will embarrass or get us into mutual conflict . . . ."

Page 580-81.

. . . That night Colonel Christie informed General Sharp that he had talked with Thayer and had decided "to comply faithfully with your orders for the surrender of my division." Two days later he marched his troops to the Japanese lines. *By that time approximately 90 percent of his men had vanished into the hills or gone back to their homes.*"

[Italics supplied.]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSE SORIANO,
Petitioner,
v.
THE UNITED STATES,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S BRIEF IN REPLY TO SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON THE STATUTE OF LIMITATIONS

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December 1, 1956

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

JOSE SORIANO,
Petitioner,
against
THE UNITED STATES,
Respondent.
No. 49

PETITIONER'S BRIEF IN REPLY TO SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON THE STATUTE OF LIMITATIONS

Argument

A.

THE QUESTION WHEN PETITIONER'S CLAIM ACCRUED IS PROPERLY BEFORE THE COURT.

The government's argument in Points I and II of its supplemental brief requires no written reply, unless it be to the suggestion that the petitioner, in raising the question when the claim accrued, has improperly presented a question not previously presented, not decided in *Compania Maritima* v. *United States,* No. 50165 (Nov. 7, 1956), and not authorized to be argued before this Court.

Petitioner believes that this question—the date on which the claim accrued—is inherent in every suit before the Court of Claims. The question can be decided by following prior decisions either expressly or by im-

plication. It is submitted that the exact question of accrual now being presented to this Court was considered and decided by implication in *Compania Maritima* and in this case by virtue of the Court's prior decisions in *Tan* v. *United States*, 122 Ct. Cls. 662 (1952) and other similar cases since *Dino* v. *United States*, 119 Ct. Cls. 307 (1951), in which one of the two grounds for dismissal was a holding that since the claims had not been presented to the Army, they had not accrued.

The facts speak for themselves. Petitioner can make no allegations as to the legal conclusions flowing therefrom—the time of accrual of the claim—that are any more binding upon himself than they are on the government or on this Court. The question is one of law, to be decided by this Court before applying the relevant period of limitations.

Of course, if the Court agrees with the government's view of this matter, counsel for petitioner will withdraw Point A of Part II of his brief. Petitioner had no intention of urging any matters on the Court not within the scope of its permission to brief and argue the statute of limitations question.

B.

THE RUNNING OF THE TIME LIMITED FOR ACTION IN A CONSENT STATUTE IS SUSPENDED BY WAR IN THE SAME MANNER THAT ALL OTHER STATUTES LIMITING EITHER THE REMEDY OR THE RIGHT ARE SUSPENDED.

In its supplemental brief on the question of the statute of limitations the government does not rely on *Compania Maritima* v. *United States, supra,* in which

the Court of Claims held that war suspends the running of the statute of limitations (28 U. S. C. § 2501) as to citizens of belligerents, but not as to allies resident in enemy-occupied territory.[1]

Instead, the government takes a much broader position. The basic argument on which it relies is that the limitation provisions contained in 28 U. S. C. § 2501 are a limitation upon the consent of the United States to be sued and, as such, cannot be expanded by common law principles or by implication. The government attempts to distinguish a substantial body of case law on two grounds: (1) the decisions of this Court supporting petitioner's position were decided before *Erie R.R. Co.* v. *Tompkins,* 304 U. S. 64 (1938), and are now inapplicable and (2) a statute permitting suit against the sovereign should not be construed to include any exception not specifically mentioned therein.

Regarding the point based on *Erie R.R. Co.* v. *Tompkins, supra,* all that need be said is that the government completely misconstrues the meaning of this decision.[2] This Court is not now considering state-created rights, but is interpreting an act of Congress. In so doing, it will, of course, use time-honored methods of construction—among which are federal common law and international law. It is basic to the issue now being discussed that petitioner is not seeking to extend 28

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[1] We contend, of course, that the Court of Claims should have adhered to its decision in *Marcos* v. *United States,* 122 Ct. Cls. 641 (1952), in which it held that when persons in the forum are prohibited from trading and communicating with a claimant, the statute is suspended.

[2] See Moore, *Commentary on the U. S. Judicial Code,* pp. 307-359, esp. p. 340 (1949).

U. S. C. § 2501, but is attempting to establish the correct construction of that provision according to precedent and reason. It is submitted that this is where the second ground of the government's argument is deficient. That argument characterizes the petitioner's position as an attempt to extend the statute and does not join issue on the statute's construction.

The federal cases cited in petitioner's previous brief are based on federal common law incorporating established principles of international law. These decisions apply with equal force to 28 U. S. C. § 2501. They hold that statutes of limitations are based on the presumption that the courts are open to plaintiffs, and therefore a statute of limitations is suspended during the time when a person in petitioner's position is prohibited by international or local law from bringing an action.

Every reason which applies in construing a statute of limitations also applies in construing a limiting clause in a statutory consent to suit by a sovereign.[3] Where Congress has granted a remedy in the Court of Claims, it is not logical to conclude that it intended by the limitations provisions to take away the remedy before a claimant could resort to it.

The position now taken by the government was rejected by the Supreme Court of Oregon sitting *en Banc* in *Peters* v. *McKay*, 195 Ore. 112, 238 P. 2d 225 (1951). That case involved a suit against the State of Oregon

[3] The discussion of 28 U. S. C. § 2501 in this brief refers to the six year limiting period of that provision. Petitioner's Brief, Part II—Statute of Limitations, contains our position that the 3 year saving period is a matter of grace which is concerned with personal disabilities not relevant to this action and which is only to be considered if the 6 year provision is unavailing.

under an escheat statute by a plaintiff who had been a resident of the Netherlands during its occupation by Germany in World War II. After a complete survey of the authorities relating to the effect of war on ordinary statutes of limitations and on statutes creating and limiting new rights, the court held that when the courts are closed to claimants by war, "consent" statutes are suspended in the same manner as other statutes. The court said:

> "* * * The construction of the limitation in the consent statute presents an issue more closely resembling that involved in the cases in which it is held that war tolls ordinary statutes of limitation. In both, the right exists. In one the remedy is limited by a legislative mandate; in the other, the period within which the state consents to be sued is so limited. No reason is perceived why the court should not adopt a uniform rule of construction for both statutes when the intervention of war is asserted as ground for suspension of the running of the limitation. It is true that there is no provision in the consent statute for the suspension thereof, but the same is true concerning the cases in which it is held that war suspends statutes which create rights unknown to the common law and which limit both right and remedy. When the state consents to be sued, and then by reason of its recognition of rules of international and common law, closes its courts to the litigant, thereby denying the privilege which it granted, some construction must be sought which will avoid absurdity. It is unbelievable that the same hand which gives should also be construed to take away. The law does not follow the precedent of the nursery rhyme, 'Hang your clothes on a hickory limb, but don't go near the water.'" (238 P. 2d at 236)

The reasoning of *Peters* v. *McKay* was applied by the Supreme Court of California in *In re Caravas' Estate,* 40 Cal. 2d 33, 250 P. 2d 593 (1952), in support of a holding that the California escheat statute was suspended in favor of a resident of Greece during the German occupation of Greece during World War II.[4] So too, in *Osbourne* v. *United States,* 164 F. 2d 767 (2d Cir. 1947), the court held that in an action against the United States, a consent statute was suspended in favor of an American citizen who was interned by the Japanese.

The Court of Claims, moreover, has consistently recognized that the present and prior versions of 28 U. S. C. § 2501 are suspended when war closes the court to a claimant.[5] In the *Compania Maritima* case, the Court of Claims continued to recognize this principle, but restricted it in a way which petitioner believes is improper and illogical. See footnote 1, *supra.*

That statutes of limitations are suspended when trade and communication are prohibited and the courts are closed to a plaintiff is a principle of public and international law. See, *e.g., Hanger* v. *Abbott,* 73 U. S. 532 (1867). Read in this light, the above-cited cases are merely applications of the rule that, unless it is unmistakably clear that a legislature intends a statute to contravene a principle of international law, courts will

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[4] In *Caravas'* the United States took the position urged by us in this brief.

[5] *E.g., Marcos* v. *United States,* 122 Ct. Cls. 641 (1952); *Green* v. *United States,* 17 Ct. Cls. 174 (1891); *Campbell* v. *United States,* 13 Ct. Cls. 108 (1877); *Sierra* v. *United States,* 9 Ct. Cls. 224 (1870).

construe the statute to avoid any conflict with international law.[6]

C.

THE KENDALL CASE IN NO WAY SUPPORTS THE GOVERNMENT'S POSITION

Kendall v. *United States*, 107 U. S. 123 (1882), is relied on by the government as controlling on the question here involved. Analysis of this case reveals that it is not applicable to the present situation.

Kendall was a rebel who had been engaged in the service of the Confederacy. His cause of action arose on or about the last day of December, 1865, and his petition was filed November 22, 1872. The government pleaded the six-year statute of limitations (Act of March 3, 1863, § 10, 12 Stat. 765, 767), the terms of which were identical to former Section 2501, namely 28 U. S. C. § 262.

Another section (now repealed) in the Court of Claims Act in effect at that time provided:

> "* * * *Provided, however,* That in order to authorize the said court to render a judgment in

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[6] See *MacLeod* v. *United States*, 229 U. S. 416, 434 (1913):

> "The statute should be construed in the light of the purpose of the Government to act within the limitation of the principles of international law, the observance of which is so essential to the peace and harmony of nations, and it should not be assumed that Congress proposed to violate the obligations of this country to other nations, which it was the manifest purpose of the President to scrupulously observe and which were founded upon the principles of international law."

See also, *Peters* v. *McKay*, 195 Ore. 112, 238 P. 2d 225, 231, 233 (1951); *The Over the Top*, 5 F. 2d 838, 842 (D. Conn. 1925); 1 Hyde, *International Law*, 16-17 (2d rev. ed., 1945); *International Law*, 30 Am. Jur. 179, § 7.

favor of any claimant, if a citizen of the United States, it shall be set forth in the petition that the claimant, and the original and every prior owner thereof where the claim has been assigned, has at all times borne true allegiance to the Government of the United States, and whether a citizen or not, that he has not in any way voluntarily aided, abetted, or given encourgement to rebellion against the said Government, which allegations may be traversed by the Government, and if on the trial such issue shall be decided against the claimant, his petition shall be dismissed." (Act of March 3, 1863, § 12, 12 Stat. 765, 767)

Kendall claimed that, since he had been a rebel, the above statute in effect closed the Court of Claims to him and suspended the statute of limitations until the President's Proclamation of general amnesty of December 25, 1868 (15 Stat. 711) reopened that Court to him. Since suit had been brought within six years of that date, Kendall claimed that it was timely.

This Court rejected Kendall's contention, stating (p. 125):

"* * * And that there might be no misapprehension as to the intention of Congress, the statute, after enumerating the cases to which the limitation of six years should not apply, declares that 'no other disability than those enumerated shall prevent any claim from being disbarred.' The court cannot superadd to those enumerated, a disability arising from the claimant's inability to truthfully take the required oath. It has no more authority to engraft that disability upon the statute than a disability arising from sickness, surprise, or inevitable accident, which might prevent a claimant from suing within the time prescribed."

To understand the reasons underlying the Court's decision it is necessary to realize two things: First, by Presidential Proclamation, the Civil War ended on April 2, 1866, 14 Stat. 811 (*Sierra* v. *United States, supra; Green* v. *United States, supra*)—*a date more than six years prior to the filing of Kendall's petition.* Second, even before that date by Presidential Proclamation of May 29, 1865, 13 Stat. 758, amnesty was available to Kendall upon the single condition that he take an oath of allegiance to the United States.[7] If he had taken such an oath, Kendall would have been entitled immediately to prosecute a claim to judgment in the Court of Claims. *Green* v. *United States, supra; cf. Paragoud* v. *United States,* 80 U. S. 156 (1871).

Therefore, the Court of Claims was open to Kendall for more than six years prior to the filing of his petition. Persons in the forum were free to communicate with him and he was free to file a petition in the Court of Claims. The facts in the Kendall case thus gave no opportunity for the application of the rule of *Hanger* v. *Abbot,* 73 U. S. 532 (1867). Neither the opinion of this Court nor the opinion of the Court of Claims refers to *Hanger* v. *Abbot,* and the only reference in the Record on Appeal is a highly incidental reference in Appellant's Brief on Appeal.[8]

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[7] Amnesty under the Presidential Proclamation of May 29, 1865 was not available to certain enumerated classes of persons, unless presidential permission to take the required oath was obtained. Such permission was to be granted liberally. 13 Stat. 759. Neither the Court's opinion nor the Record or Briefs indicate whether Kendall came within one of the excepted classes. In the lower court's opinion (14 Ct. Cls. 374 (1878)) it is stated, however, that Kendall's status was the same as that of the claimant in *Sierra* v. *United States,* 9 Ct. Cls. 224 (1870), who *did not* fall within any of the excepted classes.

[8] P.6.

It is true, of course, that unless Kendall took an oath of allegiance to the United States as required by the proclamation of May 29, 1865, he could not have prosecuted his claim to judgment until after the general amnesty of December 25, 1868, but this was a *personal disability*. As this Court correctly pointed out, since this disability was not specifically included in the saving clause, the Court could not add it to those enumerated. In the instant case we are dealing with an absolute prohibition against communication recognized by international and local law, not a personal choice, nor personal disability.

Thus, the Kendall case does not hold that the statute of limitations is not suspended where war closes the court to a claimant. What the case does hold is this. Where, in the jurisdictional act establishing the Court of Claims, there is a provision establishing a condition precedent to jurisdiction (i.e. loyalty), and where the plaintiff, although given the opportunity, does not comply with that condition precedent, he cannot claim either that (1) his cause of action does not accrue until the statutory condition precedent is repealed, or that (2) his failure to comply with the statutory condition precedent is a "disability" which suspends the running of the statute of limitations. In other words, where the Court of Claims Act contains a condition precedent to jurisdiction, a plaintiff cannot use that provision to suspend the statute of limitations.

The basic condition in all of the cases where the statute of limitations has been held to be suspended in wartime is that courts are closed to the plaintiff be-

cause the people in the forum are prohibited by international or local law to communicate with him in any way. We have carefully examined the case law of the United States and have been unable to find a single case holding that an ordinary, substantive or "consent" statute of limitations is not suspended during the period in which those conditions exist.[9]

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[9] The authorities cited by the government as being in conflict with this statement, are inapposite. For example, the government cites *Rogulj* v. *Alaska Gastineau Mining Co.*, 288 Fed. 549 (9th Cir. 1923); *Poccardi* v. *Ott*, 83 W. Va. 166, 98 S. E. 69 (1919); 132 A. L. R. 317 (1941), in support of the proposition that where a time limit goes to the substance of the right involved, there is conflict in the cases as to whether the above-mentioned conditions toll the statute. In the *Poccardi* case, it clearly appears that trade and communication between the plaintiff, a resident of Italy, and the defendant were not prohibited during World War I. In the *Rogulj* case, it does not appear whether trade and communication between the plaintiff and defendant were prohibited throughout the entire period during which plaintiff claimed the statute was suspended, and the court seems to speak in terms of difficulty of communication, and waiver and estoppel, rather than of absolute prohibition. The annotation in 132 A. L. R. 317 cites only the *Poccardi* and *Rogulj* cases in support of the Government's proposition.

In this respect, the only other case deserving comment which the government cites is *Haycraft* v. *United States*, 89 U. S. 81 (1874), which is distinguishable on the same grounds, *inter alia*, as stated above in relation to the *Kendall* case.

CONCLUSION

It is respectfully submitted that, for the reasons stated in this and in our main brief on the statute of limitations, the petition in the instant case was timely filed.

Respectfully submitted,

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December 1, 1956

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Report of the Philippine Independence Commission to the Philippine Legislature, dated July 30, 1933, 78 Cong. Rec. 5146-5147	11
War Department Circular 330 (1944)	9

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 760

JOSÉ SORIANO, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the Court of Claims is not reported but is reproduced in the Petition at page 27a. That order was issued on the authority of *Logronio* v. *United States* (App. 18, *infra*), reported at 133 F. Supp. 395.

JURISDICTION

The judgment of the Court of Claims was entered on December 16, 1955. The petition for writ

of certiorari was filed on March 13, 1956. The jurisdiction of this court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the United States is liable to petitioner, a Filipino civilian, for supplies which he furnished to Filipino guerrilla units during the Japanese occupation of the Philippines.

STATUTE AND ORDER INVOLVED

There are various statutes and orders involved. Particularly relevant are:

1. The Philippine Independence Act of March 24, 1934, 48 Stat. 456, which provides in pertinent part:

> Sec. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—
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> * * * * * *
>
> (12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all

military forces organized by the Philippine government.

2. The Military Order of President Roosevelt, dated July 26, 1941, 6 Fed. Reg. 3825, which provides in pertinent part:

> Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines:
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> * * * * *

The other relevant statutes and orders are set out in the Argument, *infra*, pp. 10-15.

STATEMENT

The petition in this case seeks review of the order of the Court of Claims dismissing the complaint of petitioner, a Philippine citizen, for failure to state a cause of action against the United States. The relevant allegations of the complaint,

which was filed on April 26, 1951, may be summarized as follows:

Pursuant to the authority of the Philippine Independence Act, *supra,* and Section 12 of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by the Military Order of President Roosevelt, dated July 26, 1941, *supra,* p. 3 (R. 2). After the fall of Bataan and Corregidor in 1942, "elements of the United States Army Forces in the Far East known in short as USAFFE" refused to surrender to the Japanese; instead they fled to the hills. There the Filipinos banded themselves into guerrilla units (see Pet. p. 8) and continued, until the liberation of the Philippines, to wage military operations against the Japanese "with the express or implied authority of the Commander-in-Chief" USAFFE. (R. 2-3). Among these guerrilla units on the island of Negros, Philippines, was the so-called 1st Bn. 76th Infantry Regiment, 72nd Division, 7th Military District, which, in order successfully to prosecute military operations against the Japanese and in accordance with the Rules of Land Warfare published by the United States War Department and/or in accordance with the express or implied authority of the Commander-in-Chief USAFFE, requisitioned, commandeered and otherwise legally procured, through its authorized officers, foodstuff and food supplies, equipment, goods and merchandise from petitioner, among others (R. 2-3). At

various times from September 1942 to January 1945,[1] petitioner delivered such goods having a reasonable market value of $119,765.75 for which he was given receipts, it being clearly understood and agreed at that time that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army (R. 3). His claim for payment having been denied by the Claims Service of the United States Army on March 30, 1948, petitioner filed the present suit in the Court of Claims seeking judgment for $119,765.75 (R. 1, 4).

In its answer, the United States admitted these facts but contended, *inter alia,* that the court had no jurisdiction over the claim, it being one against the Philippine Government, rather than the United States, since the guerrilla unit had been recognized as an element of the Philippine Army. Thereafter, on August 8, 1955, the United States moved for judgment on the pleadings (R. 21).

The Court of Claims, in a *per curiam* order, granted that motion on the authority of *Logronio* v. *United States,* 133 F. Supp. 395 (App. *infra,* pp. 18-46, Pet. 27a). In *Logronio,* which involved a suit under the Missing Persons Act, 56 Stat. 143, as amended, 50 U. S. C. App. 1001 *et seq.*, for back

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[1] There is a slight discrepancy, as to the period during which petitioner alleges that he furnished supplies to the guerrillas, between what is contended in paragraph VII of the petition filed in the Court of Claims (September, 1942 through January, 1945) (R. 3) and what is shown in the detailed tabulation of the supplies furnished as set forth in Exhibit A to that petition (January 2, 1942 through December 20, 1944) (R. 7-11).

pay allegedly due a member of a Filipino guerrilla unit, the Court of Claims undertook to determine whether, as a result of the Philippine Army's being called "into the service" of the Army of the United States pursuant to the Philippine Independence Act of March 24, 1934, 48 Stat. 456, members of units of the Philippine Army, such as the recognized Filipino guerrilla unit here concerned, were actually part of the United States Army and hence able to contract for the United States; or whether they were, on the contrary, members of independent units of their own army serving merely as adjuncts to the United States Army. In resolving this issue, the court examined and considered other statutes of the United States, executive orders issued by both the American President and the Philippine President, military orders and statements, congressional reports and hearings and other documents bearing on the intent of Congress with respect to the relationship to be established between the two armies, as well as the relationship that in fact existed. Based on this examination, the Court of Claims concluded that the Philippine soldiers remained members of independent units of their own army, serving merely as adjuncts to the United States Army, and consequently that claims for back pay by Filipino guerrilla personnel and claims for supplies furnished to such personnel would not lie against the United States but against the Republic of the Philippines.

ARGUMENT

1. Petitioner contends that the United States should pay him for supplies furnished during

World War II to a Filipino guerrilla unit fighting to rid the Philippines of its Japanese conquerors. The theory is that these Filipino guerrillas were actually "part" of the Army of the United States and hence the United States should be deemed to have agreed to pay for the supplies furnished. Twice, the Court of Claims has reviewed the pertinent materials and ordered dismissal of similar cliams, ruling in each case that the units were not *part* of the Army of the United States and, therefore, were not authorized to contract for the United States. Each time, the court ruled that the guerrilla units were part of the Philippine Army *serving with* United States forces and that, therefore, any remedy for supplies furnished them would lie against the Republic of the Philippines. *Victorio* v. *United States,* 91 F. Supp. 748; *Logronio* v. *United States,* 133 F. Supp. 395 (see App., *infra*).

Petitioner points out that in a later, but still preliminary, stage of the *Victorio* case the Court of Claims reconsidered its prior decision and permitted Senor Victorio to file a new, amended petition reasserting his right to compensation from the United States. *Victorio* v. *United States,* 106 F. Supp. 182.[2] But, as that court explained in the *Logronio* case, *supra,* when overruling this second *Victorio* decision and returning to its original view of the matter, this special permission was granted primarily because of a mistaken reliance by the court upon the Act of January 26, 1918, 40 Stat.

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[2] By order dated November 8, 1955, this amended petition was dismissed on authority of the *Logronio* case, *supra.*

432, providing that when called into the service of the United States the Philippine Army should be organized in the same manner as the National Guard. Reliance upon this Act, the court stated, overlooked the completely changed status, in 1942-45, of the Philippines and of its army resulting from enactment of the Act of March 24, 1934, 48 Stat. 456, providing for the eventual "complete independence of the Philippine Islands," and the promulgation, on February 8, 1935, with Congressional approval, of the Philippine Constitution.[3]

These acts, the Court of Claims correctly concluded in *Logronio,* modified the 1918 Act and made quite clear that the Army of the Philippines could no longer be treated as if it were a National Guard unit (i.e., a unit which becomes an integral part of the Army of the United States when called into its service), but was to be considered a self-governing entity, with its own officers, finances, organization and laws, under the control of the almost completely independent and autonomous Commonwealth of the Philippines.

There is no dispute (a) that, under authority of §2(a)(12) of the Philippine Independence Act of March 24, 1934, 48 Stat. 456, the entire Philippine Army was called into the service of the armed forces of the United States, in 1941, by Military Order of the President, 6 Fed. Reg. 3825, and by order of the Commanding General of United States

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[3] Indeed, it was by authority of the 1934 Act, not the 1918 Act, that the President called the Philippine Army. 6 Fed. Reg. 3825.

Army Forces in the Far East; (b) that the Philippine Army remained in the service of the armed forces of the United States until July 1, 1946, when released by Order of the President (11 Fed. Reg. 7394); and (c) that the organization alleged to have been furnished supplies by petitioner was retroactively recognized as having been part of the Philippine Army during the intervening period (R. 14). Consequently, throughout the years in which it is alleged that petitioner furnished supplies to this guerrilla unit, the Philippine Army as a whole was clearly "serving with" the armed forces of the United States.

But petitioner contends, and must contend, more than this. His case rests upon the assumption that, when it was called into the service of the armed forces of the United States, the Philippine Army lost its character as a separate force and was integrated into the American Army, becoming so much a part of it that those who had been personnel of the Philippine Army acquired the power to bind the United States by implied contract.[4] However, as the

[4] Of course, "anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." *Federal Crop Insurance Co.* v. *Merrill*, 332 U.S. 380, 384. Under the authority of Section 201 of the First War Powers Act, 55 Stat. 838, and Executive Order 9001, 6 Fed. Reg. 6787, and War Department Circular 330 (1944) issued thereunder, it is probable that commanding officers of the Army of the United States could, in an emergency have rendered the United States liable in implied contract by requisitioning supplies for Army use. However, it is doubtful that commanding officers of irregular army guerrilla units could similarly have rendered the United

following summary of pertinent materials will show, the Philippine Army was never integrated into the Army of the United States. From the very beginning, it was assumed that the Philippine Army would maintain its separate and independent status, even while serving with the American Army. Indeed, recognition of the guerrilla units came from the Philippine President, not the American President (App. 36-37). These units were thus no more incorporated into the American Army than were those units of the Army of the Republic of Korea which served with the American Army during the Korean conflict.

The following are some of the pertinent statutes, executive orders, military orders and other documents upon which the Court of Claims based its decisions:

(a) At the time here concerned, 48 Stat. 153, as amended, 10 U.S.C. 2 (1946 ed.), statutorily defined the Army of the United States as including:

> * * * the Regular Army, the National Guard of the United States, the National Guard while in the service of the United States, the Officers' Reserve Corps, the Organized Reserves, and the Enlisted Reserve Corps, and shall include persons inducted into the land forces of the

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States liable, and it is even more doubtful that a private or a junior officer of such an American guerrilla unit could have done so. Since the requisitions in this case were made by enlisted guerrillas or junior officers (see R. 7-11), these would be additional hurdles for the petitioner, even if this Court should find that Filipino guerrilla units were part of the Army of the United States.

> United States under Public, Numbered 783, Seventy-Sixth Congress (the Selective Training and Service Act of 1940), as amended.

Plainly, the Philippine Army is not included within this definition.

(b) The Report of the Philippine Independence Commission to the Philippine Legislature, dated July 30, 1933, which was considered by Congress when enacting the Philippine Independence Act of 1934, 48 Stat. 456, stated:

> Under the Commonwealth government, the Philippines * * * will be * * * a semisovereign state with a personality in international law separate and distinct from the United States. * * * The exact nature and measure of the portion of sovereignty reserved by the United States may be determined from the mandatory provisions of the independence act (sec. 2), which are to be inserted in the constitution of the Commonwealth. * * * They are the only limitations on the sovereignty of the Filipino people. Those powers of government not expressly mentioned as reserved to the United States are necessarily excluded. * * * [78 Cong. Rec. 5146-5147]

(c) Section 2(a)(12) of the Philippine Independence Act provides that the new Philippine Constitution must contain the following provision: "The Philippine Islands recognizes the right of the United States * * * to maintain military and other reservations and armed forces in the Philippines,

and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government." Section 1(12) of the Ordinance appended to the Philippine Constitution, adopted February 8, 1953, contains that provision (App. 28-29, n. 6). It should be noted that this language does not assert the right of the United States to "draft," "incorporate" or "assimilate" the Philippine Army into its own but only to "call into the service" of its armed forces those of the Philippine Islands.

(d) In addition to providing for the popular election of President, Vice President and Legislature and for an independently appointed Judiciary, the congressionally authorized Philippine Constitution also delegated to the newly created office of Philippine President the duties of "Commander-in-Chief of all armed forces of the Philippines." Article VII, § 11(2) (App. 28). Subsequent acts of the Philippine National Assembly established separate ranks and separate pay scales for the personnel of the Philippine Army.[5]

(e) On July 26, 1941, President Roosevelt issued a Military Order calling the Philippine Army into the service of the armed forces of the United States, 6 Fed. Reg. 3825. He placed that army *as a unit* under the command of a General Officer,

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[5] For example, Commonwealth Act No. 1, enacted by the National Assembly on December 21, 1935, established, *inter alia*, the rank of third lieutenant, for which there is no counterpart in the American Army, and also established special pay scales for technicians and medical corpsmen, also not applicable to the American Army (App. 29).

U. S. Army, to be designated by the Secretary of War. On the same day, General Douglas MacArthur was designated Commanding General of the United States Army Forces in the Far East having command also over the Philippine Army. Shortly after General MacArthur received command he issued the following statement (in part):

> All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own ration, and their own code of military law. [App. 32.]

(f) When testifying before a House Committee to recommend additional appropriations to fulfill our obligation to support the Army of the Philippines, General George C. Marshall, then Army Chief of Staff, stated:

> * * * This Army, being an Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States. [Hearings of House Committee on Appropriations on the Third Supplemental National Defense Appropriation for 1942, 77th Cong., p. 47].

(g) National Defense Appropriation Acts of the United States, enacted throughout the war, recognized the independent status of the Philippine

Army by providing special appropriations for that army, to be payable by the United States Treasury only to the Government of the Commonwealth of the Philippines upon its written request for use to defray expenses of its army. 55 Stat. 813; 56 Stat. 628; 57 Stat. 365; 58 Stat. 591; 59 Stat. 401; 60 Stat. 14. Moreover, disbursements under these acts by officers of the Philippine Army were not subject to the rules imposed upon American officers; they were left free to use their judgment in the best interests of the Philippine Army. E. O. 9011, 7 Fed. Reg. 145 (App. 32-33).

(h) When General Jonathan Wainwright surrendered the forces under his command on May 7, 1942, he tendered to the senior Japanese officer on Corregidor "the formal surrender of all *American and Philippine Army troops* in the Philippine Islands." 91 F. Supp. at 751.

(i) On October 28, 1944, after returning to the Philippines with General MacArthur's American forces, President Osmena of the Commonwealth of the Philippines issued Executive Order No. 21, declaring that all persons then actively serving in military forces in the Philippines which were recognized by the United States Army Commander-in-Chief of the Southwest Pacific Area were to be considered on active service *in the Philippine Army* (App. 22, 37).

(j) Military orders issued pursuant to President Osmena's Executive Order No. 21 by the Commander-in-Chief, Southwest Pacific Area, recognized the status of members of these Filipino

Guerrilla units as "officers and enlisted men of the Philippine Army" (App. 37).

(k) In 1946 when Congress appropriated $200,000,000 for the Army of the Philippines it added a proviso to the Act that:

> * * * service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been, service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person * * * in the military or naval forces of the United States * * * except * * * [etc.] [60 Stat. 14].

When these statutes, orders and other documents are considered together, they provide overwhelming support for the conclusion of the Court of Claims that personnel of the Philippine Army could not enter into contracts binding upon the United States in the absence of express authorization.

2. Petitioner asserts that the decision below is in conflict with *Petition of Agustin*, 62 F. Supp. 832 (N.D. Cal.) (Pet. 8). However, the *Agustin* case dealt with an entirely different problem, that of the right to naturalization of a person "who

has served * * * honorably in the military or naval forces of the United States." Of course, the considerations in determining whether or not an individual "served in" the military forces of the United States so as to entitle him to citizenship are quite different from those involved in determining whether or not one was sufficiently "a part" of the military forces to enable him to contract for the United States. Moreover, the facts in *Agustin* were different. There, the petitioner not only had been a member of a guerrilla band, but subsequently he was attached to an American unit and received directly from the American Army the pay and allowance of a Colonel (an allowance that was not authorized under Philippine law for Philippine officers) as well as leave and transportation to come to the United States. This service with the American Army, independently of his activity as a guerrilla, satisfied the requirements of the Nationality Act.

Petitioner's further contention that the decision below amounts to "a taking of property without due process of law" raises no further question, for it rests on the erroneous premise that the supplies were furnished to the United States rather than to an autonomous Philippine Army unit serving with the Army of the United States.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL, 1956.

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 354-54

(Decided July 12, 1955)

ELEUTERIO LOGRONIO

v.

THE UNITED STATES

ON DEFENDANT'S MOTION TO DISMISS

WHITAKER, *Judge,* delivered the opinion of the court:

Plaintiff's claim is for pay he claims is due him as an officer in the Philippine Army. His claim covers three periods: (1) from December 18, 1941 to April 8, 1942; (2) from April 8, 1942 to September 9, 1943; and (3) from September 9, 1943 to March 31, 1945. Except for the second period, he has been paid by the Army of the Philippines under the Missing Persons Act of the Congress of the United States (Act of March 7, 1942, 56 Stat. 143, as amended; sections 1001 et seq., Title 50, U. S. C. Appendix (1952 ed.)). His complaint is that he was given the pay of a sergeant, whereas he alleges he was a first lieutenant from December 18, 1941 to March 31, 1945, and he sues for the difference in pay and allowances.

For the second period, from April 8, 1942 to September 9, 1943, he was found to be in a "no casualty status," and, therefore, not entitled to any benefits under the Missing Persons Act for this period. He sues for his full pay and allowances for this period.

It appears that plaintiff was a member of the Philippine Army, but presumably his suit is against the United States and not the Philippines, although his petition does not so state. He prays for judgment "ordering the payment" of the amounts he claims, but he does not state against whom he desires judgment. We shall assume, however, he is asking judgment against the United States.

Although a member of the Philippine Army, plaintiff is entitled to claim the benefits of the Missing Persons Act passed by the Congress of the United States, *supra*. The Appropriation Act of February 18, 1946 (60 Stat. 6, 14; 38 U. S. C. 1940 ed. 38) appropriated $200,000,000 for the Army of the Philippines, but with the following provisos:

> Army of the Philippines, $200,000,000: *Provided,* That service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or

benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof, except benefits under (1) the National Service Life Insurance Act of 1940, as amended, under contracts heretofore entered into, and (2) laws administered by the Veterans' Administration providing for the payment of pensions on account of service-connected disability or death: *Provided further,* That such pensions shall be paid at the rate of one Philippine peso for each dollar authorized to be paid under the laws providing for such pensions: *Provided further,* That any payments heretofore made under any such law to or with respect to any member of the military forces of the Government of the Commonwealth of the Philippines who served in the service of the armed forces of the United States shall not be deemed to be invalid by reason of the circumstances that his service was not service in the military or naval forces of the United States or any component thereof within the meaning of such law.

On July 25, 1947, the foregoing Act was amended (61 Stat. 455) by adding the following at the conclusion thereof: "and (3) the Missing Persons Act, approved March 7, 1942 (56 Stat. 143), as amended."

However, plaintiff is not entitled to recover under the Missing Persons Act, as amended, *supra*, if for no other reason, because section 9 thereof (sec. 1009 of Title 50 App. U. S. C.) provides: "The head of the department concerned, or such

subordinate as he may designate, shall have authority to make all determinations necessary in the administration of this Act, and for the purposes of this Act determinations so made shall be conclusive as to death or finding of death, as to any other status dealt with by this Act, and as to * * *." Then later the section provides again: "Determinations are authorized to be made by the head of the department concerned, or by such subordinate as he may designate, of entitlement of any person, under provisions of this Act, to pay and allowances, including credits and charges in his account, and all such determinations shall be conclusive. * * *"

The determination has been made by the authorized representative of the head of the department concerned, and we plainly have no jurisdiction to alter it. *Moreno* v. *United States,* 118 C. Cls. 30; cert. den. 342 U. S. 814.

Plaintiff's claim for pay and allowances while he was a member of a guerrilla unit stands on an entirely different basis. Plaintiff's petition does not allege that the unit of which he was a member had been recognized by the Commander in Chief, Southwest Pacific Area, as required by the order of Mr. Osmena, President of the Commonwealth of the Philippines, hereafter quoted in part; but even if his unit had been so recognized, we are of opinion that the members thereof have no claim against the United States for pay and allowances. Recognized or not, they never became members of the Army of the United States, and are not entitled to the pay and allowances of such members, nor were they authorized to bind the United States in any respect. Upon recognition by the Commander in

Chief, Southwest Pacific Area, they did become members of the Philippine Army, pursuant to Executive Order No. 21, issued by Mr. Osmena, President of the Commonwealth of the Philippines, on October 28, 1944; but the Philippine Army never became a part of the Army of the United States.

We so held in our first opinion in the case of *Isidro Victorio* v. *United States,* No. 49541, decided July 10, 1950. On a motion for a rehearing, we concluded, mainly because of the provisions of the Act of January 26, 1918 (40 Stat. 432; 32 U. S. C. 1940 ed. sec. 84), that the Philippine Army did become a part of the Army of the United States, including members of recognized guerrilla units. (Opinion of July 15, 1952, 122 C. Cls. 708.) However, we have reexamined the question and now conclude that the Act of January 26, 1918, had no application to the conditions existing in 1941, that the call of the Philippine Army "into the service of the armed forces of the United States" by President Roosevelt on July 26, 1941, did not give to the members of the Philippine Army the status of members of the Army of the United States.

We think we erred in our opinion on motion for a rehearing in the *Victorio* case, *supra,* decided July 15, 1952, and that decision is overruled.

The Act of January 26, 1918, was passed when the Philippines were a territorial possession of the United States, acquired by it from Spain under the Treaty of 1898. The chief executive officer of the Philippines was a Governor General appointed by the President of the United States, and confirmed by the United States Senate. Its Supreme Court

was appointed by the President of the United States, and confirmed by the United States Senate. It had its own Legislature, but this Legislature could pass no law in conflict with the Constitution of the United States nor with any Act of Congress. It was, therefore, entirely logical at that time for Congress to enact, as it did in the Act of January 26, 1918, *supra,* that all members of the militia "and other locally created armed forces in the Philippine Islands" * * * "may be drafted into * * * [the service of the United States] and organized in such manner as is or may be provided by law for calling or drafting the National Guard [of the States] into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted."

However, the situation was entirely different when President Roosevelt on July 26, 1941, called the Philippine Army "into the service of the armed forces of the United States." In the meantime the Congress of the United States had passed the Philippine Independence Act on March 24, 1934 (48 Stat. 456), providing for "the complete independence of the Philippine Islands," to become completely effective within a period of ten years. Under that Act the Philippine Legislature was authorized to provide for the election of delegates to a constitutional convention to meet not later than October 1, 1934, "to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands * * * which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded

between the United States and Spain on the 10th day of December 1898."

This right to formulate a constitution was, however, subject to certain conditions set out in the Act, "pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands." Among these conditions were that all citizens of the Philippine Islands "shall owe allegiance to the United States," that the officers "of the government of the Commonwealth of the Philippine Islands" shall recognize and accept the "supreme authority of and will maintain true faith and allegiance to the United States," the foreign affairs of the Islands were to be under the direct supervision and control of the United States, the decisions of the courts of the Commonwealth of the Philippines were subject to review by the Supreme Court of the United States, and the United States reserved "the right to intervene for the preservation of the government of the Commonwealth of the Philippines and for the maintenance of the government as provided in the constitution thereof," etc.

Of particular pertinence to the question at issue in this case is the following condition, which we quote:

> The Philippine Islands recognizes the right of the United States * * * to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

Section 4 of the Act provided for the submission

of the Constitution "to the people of the Philippine Islands for their ratification or rejection." It was further provided:

> If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine independence, and the Governor General shall, within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution.

It was further provided that after the election of the officers provided for in the Constitution, and the proclamation of the President to that effect, "the existing Philippine Government shall terminate, and the new Government shall enter upon its rights, privileges, powers and duties, as provided under the Constitution."

Section 6 dealt with "Relations with the United States Pending Complete Independence." Subsection (a) thereof provided for an import duty on sugar coming into the United States at the same rate as applied to sugar "imported from foreign countries." The same was true of coconut oil, and yarn, twine, cord, cordage, rope and cable. These import duties, however, were to be levied only when the importation exceeded certain stated quantities of the articles named. On exportations from the Philippines of articles below the limits set out, the Philippines were to impose an export tax, which was graduated over the ten-year period before the independence of the Islands became complete. The

export taxes so levied by the Philippines were to be applied to the bonded indebtedness of the Philippine Islands, its provinces and municipalities.

There were other restrictions imposed during the transition period from a territorial possession to an independent country, but no longer was the Governor General, appointed by the President of the United States, the chief executive officer of the Islands, nor was the Supreme Court of the Islands appointed by the President of the United States. Instead of the Governor General, the President was authorized to appoint a High Commissioner to the Commonwealth of the Philippine Islands, who was authorized to represent the President of the United States in the Philippine Islands and was given the right of access to all records of the Government, and was entitled to such information as he should request, but he exercised no executive power.

Under the Constitution, the Commonwealth of the Philippine Islands was forthwith authorized to elect a President, and a Vice President, and a Legislature, and it was authorized to provide for a Resident Commissioner to the United States, to represent it in this country.

Section 8 provided that after the acceptance by the Philippine Legislature of the Philippine Independence Act of March 24, 1934, that thereafter citizens of the Philippine Islands should be considered aliens for the purposes of the United States immigration acts, and it was provided that "for such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty."

Section 10 provided:

> On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines * * * and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

We have by no means quoted the Act in full, but only so much thereof as to indicate the markedly different status of the Philippine Islands on the date President Roosevelt called the Philippine Army into the service of the United States and its status at the time of the passage of the Act of January 26, 1918, *supra*.

On the date of the issuance of President Roosevelt's order, the independence of the Philippine Islands was not complete, but it was well under way, and in many respects it was in the status of a country foreign to the United States.

The Act of January 26, 1918, provided for the drafting of the members of the Philippine militia into the Army of the United States; the Philippine

Independence Act of 1934, on the other hand, authorized the President to call the Philippine Army "into the service of the armed forces of the United States." This was not an authorization to make the Philippine Army a part of the Army of the United States; it was authorization to call them into the service of the armed forces of the United States, but as a separate unit. The Philippine Army never lost its identity. The Philippine Independence Act, unlike the Act of January 26, 1918, did not provide for the drafting into the Army of the United States of the members of the Philippine Army. It provided for the calling of the whole Army into the service of the armed forces of the United States, which is plainly different from drafting its members into the Army of the United States. The Philippine Army retained its identity, and never did become a part of the Army of the United States.

The Constitution of the Commonwealth of the Philippine Islands provided:

> The President [of the Commonwealth] shall be Commander in Chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out armed forces to prevent or suppress violence, invasion, insurrection, or rebellion. * * * [6]

* * * * *

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[6] The Ordinance appended to the Constitution provided, however, in section 1:

"Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines.

* * * * *

On November 14, 1935, the President of the Philippines by executive order assumed command of all the armed forces of the Philippines. Under Commonwealth Act No. 1, passed on December 21, 1935, it was provided in section 22:

* * * * *

(a) All commissioned officers in the Army shall be citizens of the Philippines * * *. Commissioned grades authorized in the Army of the Philippines shall include third lieutenant * * *.

(b) * * * All appointments and promotions [of officers] shall be made by the President * * *.

Congress clearly intended that the Philippine Army should retain its identity and that it should not become a part of the Army of the United States. On December 17, 1941, about four months after the President called the Philippine Army, Congress passed a Supplemental Appropriation Act (55 Stat. 810), "For the National Defense." Section 101 provided for various appropriations for military activities of the War Department, including, among other things, a sum for "expediting production," for a "contingent fund, Chief of Staff," for "military intelligence activities," for "welfare of enlisted men," for "pay of the Army," for "travel of the Army," etc. After making various and sundry appropriations for the Army of the United States, it then made an appropriation

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"(12) The Philippines recognizes the right of the United States * * * upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines."

under the heading of "Army of the Philippines." This provided at page 813:

> For all expenses necessary for the mobilization, operation, and maintenance of the Army of the Philippines, including expenses connected with calling into the service of the armed forces of the United States the organized military forces of the Government of the Commonwealth of the Philippines, and expenditures incident to pay, allowances, operation, maintenance, and other activities of units and personnel of said organized military forces, and for the emergent mobilization and training of such forces, may be made without regard to the provisions of law regulating the expenditure of or accounting for funds of the United States but shall be expended and accounted for in a manner prescribed by the President of the United States, $269,000,000, to remain available until June 30, 1943, *which shall be available for payment to the Government of the Commonwealth of the Philippines* upon its written request, either in advance of or in reimbursement for all or any part of the estimated or actual cost, as authorized by the Commanding General, United States Army Forces in the Far East, of necessary expenses for the purposes aforesaid, *except that none of such moneys shall be available for the pay and allowances of personnel of said organized military forces of the Government of the Commonwealth of the Philippines, when serving in the*

Philippine Islands, in excess of the pay and allowances authorized by Philippine law, executive orders, and regulations which were in effect November 1, 1941 * * *. [Italics ours.]

Prior thereto the Legislature of the Commonwealth of the Philippines had appropriated $17,830,272.50 for the Philippine Army.

It seems to us, therefore, that the order of President Roosevelt of July 26, 1941, calling the Philippine Army into the service of the United States, was an order calling it as a separate unit, and that while in the service of the armed forces of the United States it maintained its separate identity, and did not become a part of the Army of the United States. Pertinent portions of the Order are quoted in the footnote below.[7]

This Order recited that it was issued pursuant to section 2(a)(12) of the Philippine Independence Act of March 24, 1934, *supra;* it did not recite that it was issued pursuant to the Act of January 26, 1918, *supra.*

On July 26, 1941, General Douglas MacArthur was designated the Commanding General of the

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[7] * * * "I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General officer, United States Army, to be designated by the Secretary of War from time to time, all the organized military forces of the Commonwealth of the Philippines. * * *

"This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively indicated in orders to be issued from time to time by the General officer, United States Army, designated by the Secretary of War."

United States Army Forces in the Far East. Shortly after assuming command, he issued the following statement:

> The general plan for the integration of all the armed forces in the Philippines has been formulated by General MacArthur. It envisions a progressive incorporation of the reserve divisions of the Philippine Army into the service of the United States. It comprehends eventually all elements of the Philippine Army, but until an actual outbreak of hostilities will not include these echelons which are engaged in the normal yearly training activities. * * *
>
> * * * *All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own ration, and their own code of military law.* Their training, however, will be under the immediate direction of the officers of the American Army. On muster into the American service they will be paid and supplied from American sources. * * * [Emphasis added.]

In pursuance of the appropriation for the Army of the Philippines, President Roosevelt on January 3, 1942, issued Executive Order 9011 (7 Fed. Reg. 145), which provided in part:

> * * * the following regulations governing the manner of expending and accounting for funds appropriated for the Army of the Philippines:

DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE UNITED STATES

1 (b). Advances or reimbursements made to the Government of the Commonwealth of the Philippines by disbursing officers of the Army of the United States, as authorized by the Commanding General, United States Army Forces in the Far East, for necessary expenses authorized by the Act of December 17, 1941, *will be accounted for on vouchers evidencing the amounts advanced to or paid as reimbursement to the Government of the Commonwealth of the Philippines, but such vouchers need not be supported by vouchers paid by disbursing officers of the Army of the Philippines.*

DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE PHILIPPINES

2 (a). Necessary expenditures from funds in the Philippine Treasury for the purposes authorized by the act of December 17, 1941, *will be made by the disbursing officers of the Army of the Philippines* on the approval or authority of the Commanding General, United States Army Forces in the Far East, and for such purposes as he may deem proper, *and his determination thereon shall be final and conclusive upon the accounting officers of the Philippine Government,* * * *. [Italics ours.]

Thus it is seen that the money appropriated for the Philippine Army was paid to the Common-

wealth of the Philippines and was disbursed by it. Had the members of the Philippine Army become members of the armed forces of the United States, they would have been paid of course by the finance officers of the United States Army.

Furthermore, attention is called to the fact that the Act provided:

> * * * none of such moneys shall be available for the pay and allowances of personnel * * * in excess of the pay and allowances authorized by Philippine law, executive orders, and regulations which were in effect November 1, 1941 * * *.

If the members of the Philippine Army had been drafted into the Army of the United States, they would have been entitled to the same pay as other members of the Army of the United States.

As further evidence of the fact that Congress, by the passage of the Philippine Independence Act of 1934, *supra,* did not intend that the members of the Philippine Army should become members of the Army of the United States, the Appropriation Act "for the military establishment" (56 Stat. 611, 628) for the following year again made a separate appropriation for the Army of the Philippines, and again it provided that the amount appropriated "shall be available for payment to the Government of the Commonwealth of the Philippines upon its written request * * *." The appropriation for the next fiscal year (57 Stat. 365) was couched in the same language, but it only appropriated the sum of $100, the Philippine Army having been surrendered to the Japanese. The

appropriation for the next fiscal year (58 Stat. 591) contained the same provisions, and it also appropriated only $100. The appropriation for the next fiscal year was the same, and it also was for the sum of $100 (59 Stat. 401). However, on February 18, 1946 (60 Stat. 6, 14) the appropriation act carried an appropriation of $200,000,000 for the "Army of the Philippines," and this Act recited expressly:

> *Provided,* That service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, *shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof,* except benefits under * * *. [Italics ours.]

This Appropriation Act contained the further proviso:

> That any payments heretofore made under any such law to or with respect to any member of the military forces of the Government of the Commonwealth of the Philippines who served in the service of the armed forces of the United

> States shall not be deemed to be invalid *by reason of the circumstances that his service was not service in the military or naval forces of the United States or any component thereof within the meaning of such law.* [Italics ours.]

It follows from this that it was only the Commonwealth of the Philippines that was liable for the pay and allowances of the soldiers in the Philippine Army, and that the United States is not liable therefor.

Lastly, 10 U. S. C., section 2, thus defines the Army of the United States:

> The Army of the United States shall consist of the Regular Army, the National Guard of the United States, the National Guard while in the service of the United States, the Officers' Reserve Corps, the Organized Reserves, and the Enlisted Reserve Corps, and shall include persons inducted into the land forces of the United States under sections 301-318 of Appendix to Title 50 [the Selective Service Act].

Plainly the Philippine Army does not come within this definition.

The decision of the Comptroller General in 22 C. G. 987, 989, is in accord with the view we have expressed.

Now, plaintiff alleges that he was a member of a guerrilla band in the Philippines. The members of these bands, whether the bands were recognized or not, had no greater rights than the members of the Philippine Army.

On October 28, 1944, upon his return to the

Philippines, Mr. Osmena, President of the Commonwealth of the Philippines, issued the following order (No. 21):

> 1. All persons, of any nationality or citizenship, who are actively serving in recognized military forces in the Philippines, are hereby considered to be on active service in the Philippine Army.
>
> * * * * *
>
> 4. The date of entry into active service in the Philippine Army will be that of joining a recognized military force.
>
> * * * * *
>
> 6. A recognized military force, as used herein, is defined as a force under a commander who has been appointed; designated or recognized by the Commander in Chief Southwest Pacific Area.

Under this order members of recognized guerrilla units became members of the Philippine Army, but they no more became members of the United States Army than any other member of the Philippine Army. The orders issued by General MacArthur and by other Commanders of the United States Forces were careful to recite that their status was that of members of the Philippine Army. For instance, General MacArthur's original order relative to the recognition of guerrilla units contained the following:

> * * * the status of members of these units * * * is that of officers and enlisted men of the Philippine Army.

All other orders of recognition contained similar recitals.

Recognition, therefore, only gave to the members of these units such rights as belonged to members of the Philippine Army.

We must, therefore, conclude that we erred in holding in our opinion on motion for a new trial in the *Victorio* case, *supra,* that:

> From all of the above, it appears to us that pursuant to Executive Order 21 of President Osmena, *supra,* and the additional orders issued by USAFFE headquarters, *recognized* guerrilla forces in the Philippines were considered to be on active duty in the Philippine Army, which Army had been called into the service of the Army of the United States pursuant to the Military Order of President Roosevelt, *supra,* and thus, that any requisitions made by Philippine guerrilla units in the service of the Army of the United States were for and on behalf of the United States and constitute an obligation of our Government. It further appears that the calling into the service of our forces of the Philippine units was in complete accord with the provisions of the 1918 Act and the 1934 Act. We know of no reason to question the validity of the order of our Army Headquarters, Sixth Army, recognizing the guerrilla unit in question retroactive to May 7, 1942, and accordingly any requisitions by that unit of plaintiff's property during the period of such recognition and service in our armed forces is the basis for a claim against the United States.

That decision is now overruled.

Since plaintiff in this case was, at most, a member of the Philippine Army and was not a member of the United States Army, his right of action, if any, is against the Commonwealth of the Philippines, and not against the United States.

Defendant's motion is granted, and plaintiff's petition is accordingly dismissed.

LARAMORE, *Judge;* LITTLETON, *Judge;* and JONES, *Chief Judge,* concur.

MADDEN, *Judge,* concurring in the result.

The plaintiff's claim is barred in whole by the Statute of Limitations, and, in addition, is barred in part by the finality provisions of the Missing Persons Act. But instead of deciding this simple case on those simple grounds, the case is made the vehicle for overruling our former decision in the case of *Isidro Victorio* v. *United States,* 122 C. Cls. 708. That decision was arrived at unanimously, after normal deliberation. We have not been asked to overrule it. I think that decision was right and I cannot concur in the part of the instant opinion which overrules it.

The court is in error, I think, in saying that our conclusion in the *Victorio* case was reached "mainly because of the provisions of the Act of January 26, 1918 (40 Stat. 432; 32 U. S. C. 1940 ed. sec. 84)." A reading of the opinion will show that it first treated of the right, reserved in subsection 2 (a) (12) of the Philippine Independence Act of March 24, 1934, authorizing the President to call into our armed forces all military forces of the Philippine Government; then of the President's call pursuant to the Act; then of the actions of

General MacArthur pursuant to the Act and the call.

The opinion then proceeded to consider a tenuous argument of the Government that, although these soldiers had been called into the service of our armed forces and had come in, in response to the call, they still were not in our armed forces, because, forsooth, Congress had in 1916 written a definition of "The Army of the United States" which did not include them. The argument never was of any validity and should have been ignored or answered with a sentence. But the opinion gave it undeserved attention and pointed out that, under a 1918 statute, the Philippine soldiers were called or could be drafted into our Army in the same way that our National Guard could be called or drafted. That discussion did show, quite unnecessarily, that a definition of our Army written in 1916 did not prevent Congress, in 1918, from putting into the Army persons not covered by its 1916 definition. If it could disregard its 1916 definition in 1918, it could disregard it in 1934. Hence if we assume, without deciding, that the 1918 statute had been repealed, or had fallen into disuse before 1934, the correctness of our former decision is not affected in the slightest degree.

Turning to the statutes and orders which were unquestionably in effect, we remember that Section 2 (a) (12) of the Philippine Independence Act authorized the United States, upon order of the President, to call into the service of our armed forces all military forces organized by the Philippine Government. The Constitution of the Commonwealth of the Philippines and the Ordinance appended

thereto included the same provision. The President, on July 26, 1941, issued his order, expressly referring to Section 2 (a) (12) and the Constitution of the Philippines, saying:

> I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and placed under the command of a General Officer, United States Army, * * * all of the organized military forces of the Government of the Commonwealth of the Philippines: * * *
>
> This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, * * * from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War.

General MacArthur was designated as the General Officer referred to in the Presidential Order. On December 18, 1941, he issued General Orders No. 46 calling all personnel of the Philippine Army on active duty and all active units of the Philippine Army "into the service of the armed forces of the United States in the Philippines," and directing the officers of our army to accept them for such service. As we know, they came and fought, and were defeated, and surrendered just as the rest of our soldiers did. To say that they were not members of our armed forces seems to me to be impossible. I do not see how the law or the facts could be plainer.

On May 7, 1942, General Wainwright ordered the surrender of all American and Philippine Army troops in the Philippine Islands. The language used by the General is, of course, of no importance. He was responding to the demand of the Japanese commander that the order of surrender be made so plain and inclusive that it could not possibly be misunderstood by any soldier.

Sometime later in May an underground unit known as "Hunters ROTC Guerrillas of Luzon" was organized, consisting of 193 men and officers. By the middle of 1945, the number had increased to several thousand.

On October 28, 1944, the President of the Philippines issued an Executive Order providing that all persons actively serving in recognized military forces in the Philippines were to be considered on active service in the Philippine Army, the date of entry into such active service being the date of joining a recognized military force; that a recognized military force was deemed to be a force under a commander appointed, designated or recognized by the Commander-in-Chief, Southwest Pacific Area.

On March 26, 1945, an order was issued by our Army providing for the recognition of certain guerrilla units as authorized elements of our Army, and saying that the status of members of these units was that of officers and men in the Philippine Army. That was, of course, the Army's way of saying that they were included in General MacArthur's order of December 18, 1941, calling all personnel of the Philippine Army into the armed forces of the United States.

With all of our organized troops being prisoners of the Japanese, and General MacArthur being in Australia, the paper work of the Army was, naturally, incomplete. But, in the opinion of General MacArthur when he was able to return to the Philippines, useful soldiering had been taking place in the meantime, of which we had had the benefit. He therefore issued the retroactive recognition orders dating them back to the times when the various guerrilla units began to fight. The President of the Philippines, who had also been away from the islands, made them members of the Philippine Army as of the date when they began to serve under a commander, recognized by General MacArthur. General MacArthur, after he returned and investigated, recognized them retroactively and thus brought them under the terms of his 1942 order. The paper work of the Army was again up to date.

In 1942 the Attorney General of the United States, 40 Op. A. G. 185, advised that personnel of the organized military forces of the Philippines, called into our armed forces pursuant to Section 2 (a) (12) and the President's Military Order were in active service in the land and naval forces of the United States and were entitled to benefits under the National Service Life Insurance Act. In 1943 he gave similar advice as to benefits under the Missing Persons Act. In the Act of February 18, 1946, 60 Stat. 14, Congress said:

> * * * service in the organized military forces of the Government of the Commonwealth of the Philippines, *while such forces were in the service of the armed forces of the United*

> *States* pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States * * * for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of * * * (such service) * * * except benefits under (1) (the National Service Life Insurance Act) and (2) (laws providing for the payment of pensions on account of service-connected disability or death). (Italics added.)

By the Act of July 25, 1947, 61 Stat. 455, the benefits of the Missing Persons Act were added to those which Philippine personnel should receive, the House Committee saying that they had been omitted from the 1946 Act by inadvertence.

This legislation shows a clear recognition by Congress that Philippine Army personnel were members of our armed forces. The idea of paying National Service Life Insurance, pensions, and benefits under the Missing Persons Act to soldiers or the widows of soldiers of our allies is absurd. Congress denied the other benefits such as payments for college education, loans for the purchase of homes or for going into business, etc., because it was not willing to extend those unusual benefits to these residents of a foreign country. Its saying that, for the purposes of the laws conferring these benefits, the service of these soldiers should not be *deemed* to have been service in the military forces of the United States was just a short-hand way of saying that they should not get the benefits. It says nothing, and was intended to say nothing, as to

whether, in fact and in law, they were in the armed forces of the United States.

If these persons were not, legally and in the contemplation of Congress, in the armed forces of the United States, Congress wrote its law backward. Instead of saying that they *should not,* for the purposes of the laws conferring benefits which Congress did not wish to give them, *be deemed* to be in the armed forces of the United States, Congress would have said that they *should,* for the purposes of the laws conferring the benefits which Congress wished to give them, be deemed to be in the armed forces of the United States.

If it is contended that the Philippine soldiers who were surrendered after some four months of fighting were in our armed forces, but that the guerrillas who took to the hills and harassed our enemy for three years were not, I can only say that I see nothing beyond the powers of General MacArthur in his recognizing, retroactively, the facts as they actually were during his absence. The Government has paid out large sums of money as pay to the guerrillas upon the basis of the General's retroactive recognition. I find no legal flaw in it, and none has been pointed out to us.

If it be contended that the commander of a guerrilla unit in the Philippines, his commander-in-chief being in Australia and all the intermediate commanders being prisoners of war, did not have the authority of the Government to requisition food for his troops, I think the contention is wrong. The alternative might well have been to disband the troops and terminate the resistance. Our Government, when it learned of the resistance, applauded

it. I think it is morally and legally bound to pay for what was done for its benefit.

I have discussed the *Victorio* case in detail because the opinion in this case overrules it. The discussion of the 1918 statute in the *Victorio* case is a straw-man, set up in the instant opinion and, presumably, knocked down, but, assuming that it is vulnerable, it is irrelevant, and knocking down that part of the *Victorio* opinion is no reason for overruling the decision.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSÉ SORIANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order of the Court of Claims (R. 15–16) dismissing the petition below is not reported. The opinion in *Logronio* v. *United States*, on which the order of dismissal is based, is reported at 132 C. Cls. 596.

JURISDICTION

The judgment of the Court of Claims was entered on December 16, 1955 (R. 15). The petition for a writ of certiorari was filed on March 13, 1956, and was granted on April 30, 1956 (R. 16). 351 U. S. 917. The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the United States is directly liable to Filipino civilians for supplies and equipment furnished by them during the Japanese occupation of the Philippine Islands to Filipino guerrillas who were subsequently recognized by the Philippine Government as members of irregular units of the Philippine Commonwealth Army, which Army had been called into the service of United States military forces in the Philippines and had served with those forces in resisting the Japanese invasion.

STATUTES AND ORDERS INVOLVED

The statutes and orders here involved are set forth at Appendices A through E of the petition for writ of certiorari (Pet. 1a–25a), Appendices F through CC of petitioner's brief (1b–83b), and Appendices A through C, *infra*, pp. 55–88.

STATEMENT

This action was brought against the United States in the Court of Claims to recover the value of supplies which petitioner, a Philippine citizen, allegedly furnished to Filipino guerrilla forces during the Japanese occupation of the Philippines in World War II. The allegations of the petition filed in the court below on April 26, 1951 may be summarized as follows:

Pursuant to the authority of the Philippine Independence Act (Pet. App. 2a–4a), and Section 1(12) of the Ordinance appended to the Philippine Constitution, App. C, *infra*, pp. 81–82, the Philippine Army was called into the service of the armed forces of the

United States in the Philippines by an order of President Roosevelt, dated July 26, 1941 (R. 1). After the fall of Bataan and Corregidor in 1942, "elements of the United States Army Forces in the Far East known in short as USAFFE" banded into guerrilla units and continued, until the liberation of the Philippines, to wage military operations against the Japanese "with the express or implied authority of the Commander-in-Chief" USAFFE (R. 1). Among these guerrilla units was the so-called 1st Bn. 76th Infantry Regiment, 72nd Division, 7th Military District, which, in order successfully to prosecute military operations against the Japanese and "in accordance with the Rules of Land Warfare published by the United States War Department and/or in accordance with the express or implied authority of the Commander-in-Chief," USAFFE, through its authorized officers, "requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods and merchandise" from various Filipino civilians, including petitioner (R. 2, 3). At various times from September 1942 to January 1945, petitioner delivered to "authorized officers" of this guerrilla unit goods having a reasonable market value of $119,765.75 for which he was given receipts. The petition alleges that it was "clearly understood and agreed at the time" between the various Filipino guerrillas and the petitioner that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army (R. 3).

The petition also states that petitioner's claim was denied by the United States Army Claims Service on June 21, 1948; that petitioner's right to recovery was based on "implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof;" and that petitioner resided in the Philippines at the time his claim accrued and has remained there throughout the Japanese occupation when the United States courts were inaccessible to him (R. 3, 4).

The United States' answer denied the main factual allegations of the complaint (R. 10, 11). The answer also raised three affirmative defenses: (1) that the claim presented by petitioner to the Army Claims Service "was supported by false and fraudulent receipts", that petitioner "knowingly and deliberately filed the claim in an attempt to defraud the United States," and accordingly that the claim violated 28 U. S. C. 2514 and was forfeited to the United States; (2) the court lacked jurisdiction of a claim which was against the Philippine Government, not against the United States, since it was based on alleged requisitions by guerrillas who were part of the Philippine Army; and (3) that the action was not commenced within the six-year statute of limitations (28 U. S. C. 2501) applicable to Court of Claims actions and hence was barred (R. 11, 12). Thereafter, the United States, expressly reserving the other affirmative defenses, including the defense of fraud, moved for judgment on the pleadings on the ground that the claim, if any, was against the Republic of the Philippines and not against the United States (R. 14).

The Court of Claims, in a *per curiam* order, dismissed the petition on the authority of *Logronio* v. *United States*, 132 C. Cls. 596. In *Logronio*, which was a suit by a Filipino guerrilla for back pay under the Missing Persons Act (56 Stat. 143, 50 U. S. C. App. 1001), the Court of Claims had held that the Filipino guerrillas, recognized or not, never became members of the Army of the United States, were not entitled to the pay and allowances of such members, "nor were they authorized to bind the United States in any respect". 132 C. Cls. at 601.[1]

SUMMARY OF ARGUMENT

The court below held that the United States Government is not responsible to individual Filipinos for goods allegedly furnished by them to Filipino guerrillas for their use during the Japanese occupation of the Philippine Islands in 1942–1945. The

[1] The *per curiam* order below is the fourth decision of the Court of Claims on the status of the Filipino guerrillas. In *Victorio* v. *United States*, 91 F. Supp. 748, the court dismissed a petition seeking to recover from the United States for cattle furnished Filipino guerrillas, basing its holding on the ground that the guerrillas were part of the Philippine Army, not part of the American Army. On a motion for a new trial the court, on the basis of a 1918 statute relating to the use of the Philippine territorial militia, reversed itself and granted permission to file an amended petition. *Isidro Victorio* v. *United States*, 122 C. Cls. 708. After further consideration, the court decided that the 1918 statute had no relevancy to the status of Philippine troops during World War II, reaffirmed its original view that the United States was not liable for materials furnished to Filipino guerrillas, and expressly overruled the second *Victorio* decision. *Logronio* v. *United States*, 132 C. Cls. 596. The decision below followed the *Logronio* holding.

holding was fully justified by the fact that members of the Philippine Army, regulars or irregulars, were never authorized to procure or make other commitments on behalf of the United States.

I. The petitioner states that his "right to recovery is based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof." (R. 3). It is well recognized that no one can bind the United States Government in procurement matters unless he has been expressly or impliedly authorized by the United States to do so.

II. No express authority was ever conferred upon members of the Army of the Commonwealth of the Philippines to commandeer or requisition supplies for the account of the United States Government. The petition in the court below makes no factual allegation regarding the existence of any express authorization directed to the various Filipino guerrillas to whom the petitioner says he delivered supplies.

III. The burden of the petitioner's contention is that these various Filipino guerrillas had a definite status in relation to the Army of the United States, and that by giving them that status the United States Government conferred upon them, by implication, the authority to requisition supplies for the account of the United States. The basic issue in dispute is whether the arrangements between the United States and the Army of the Commonwealth of the Philippines were such as to confer, by implication, authority from the United States Government to the individual Filipino soldiers to requisition or commandeer supplies directly

for the account of the United States Government. Our position is that these arrangements did not do so.

A. The general arrangements between the United States and the Philippine Army during the war reflected the increasing independence of the Philippine Islands. These Islands, which were acquired by the United States as a territory, were granted a large measure of autonomy by the Independence Act of 1934. Under the Philippine Constitution adopted in 1935, the Commonwealth of the Philippines established its own army to provide for the defense of the Islands both during the period in which the United States retained sovereignty and after complete independence which was promised in ten years' time. This army was an independent military force responsible to the President of the Philippines and had no connection whatever with the armed forces of the United States.

B. Under the Independence Act the United States retained the right to call whatever organized military forces the Philippine Government might have into the service of those armed forces which the United States had in the Philippine Islands. In 1941 this was done. It is clear from the legislation under which this action was taken and from contemporaneous statements by the responsible officers that the Philippine Army was to retain its status as an independent national force and was not to be merged into the Army of the United States. As a matter of fact, it kept its national status and was comparable to units of foreign armies fighting under General MacArthur's

command. Two or three particular benefits made available to Filipino soldiers by the United States Congress did not alter this general position of the Philippine Army.

In sum, the overall arrangements between the United States and the Philippine Army did not make the Philippine Army part of the Army of the United States.

C. Whatever the status of the Philippine Army might have been in general, it is clear that with respect to procurement and the creation of financial liability the arrangements with the United States were such that no one in the Philippine Army could contract directly on behalf of the United States. During the years 1941 to 1946, Congress made separate appropriations for the benefit of the Philippine Army, providing that such funds should be turned over to the Government of the Commonwealth of the Philippines to be disbursed by its disbursing officers with the approval of the Commanding General of United States Army Forces in the Far East. All expenditures made by the Philippine Army were to be made from funds in the Philippine Treasury. The United States provided assistance on a government-to-government basis, advancing funds to the Philippine Treasury and authorizing or approving the use of those funds for various expenditures of the Philippine Army. This procedure was followed both during the war and during the post-liberation period. Following the complete independence of the Philippines in 1946, the United States continued to advance

sums to the Philippine Government to meet back pay and other claims arising from guerrilla activities of the Philippine Army.

Under these arrangements any procurement by the Philippine Army, no matter by whom it was authorized, created at most an obligation on the Philippine Treasury. Petitioner contends that the guerrillas who allegedly procured supplies from him were in the Philippine Army. Rather than conferring upon them the authority to obligate the United States, that status establishes that they had no authority to create a direct liability against the United States.

IV. This case involves problems in an area where the Court should be slow to depart from the position adopted by the Executive Branch. For ten years claims of this kind have been treated by advancing funds to the Philippine Government and approving disbursement from those funds for claims that appeared to have merit. Over one and a half million separate claims have been handled in this fashion. International agreements have been reached between the now sovereign Philippine Government and the United States covering both the funds advanced and the return of the undisbursed balance. This return has not yet taken place. Recently, the Philippine Government took up through the State Department a series of additional claims against the United States on behalf of members of the Philippine Army, for additional pay for all enlisted men during the war and for other pay and allowances arising out of their status at that time. These claims are now under consideration at the diplomatic level. Under these

circumstances, the Court should be slow to depart from the position taken by the Executive Branch.

ARGUMENT

I. NO ONE CAN BIND THE UNITED STATES IN PROCUREMENT MATTERS UNLESS HE IS EXPRESSLY OR IMPLIEDLY AUTHORIZED TO DO SO

Petitioner's claim is based on implied contracts arising from action taken or receipts given by various Filipino guerrillas. Petitioner alleges that, on more than a hundred occasions in the period 1942 to 1945 (R. 5–9), cows, dried fish, rice or other supplies and material were "legally procured" from him by various "authorized officers".

The claim being on a contract, the necessity of an allegation that the guerrillas were authorized officers of the United States is clear. It is well settled that the United States can be held liable only on contracts made by officers acting under valid delegations of authority. *United States* v. *North American Transportation & Trading Co.*, 253 U. S. 330; *Sutton* v. *United States*, 256 U. S. 575; *Eastern Extension, Australasia & China Telegraph Co.* v. *United States*, 251 U. S. 355; *United States* v. *McDougall's Administrator*, 121 U. S. 89; *Hodges* v. *United States*, 125 C. Cls. 405; *Caltex (Philippines), Inc.* v. *United States*, 129 C. Cls. 605, certiorari denied, 348 U. S. 926.

The rule is clearly stated in *United States* v. *North American Transportation and Trading Company*, 253 U. S. 330, 333:

> But although Congress may have conferred upon the Executive Department power to take

land for a given purpose, the Government will not be deemed to have so appropriated private property, merely because some officer thereafter takes possession of it with a view to effectuating the general purpose of Congress. See *Ball Engineering Co.* v. *J. G. White & Co.*, 250 U. S. 46, 54–57. In order that the Government shall be liable it must appear that the officer who has physically taken possession of the property was duly authorized so to do, either directly by Congress or by the official upon whom Congress conferred the power.

This Court has emphasized that the contracting authority of an officer of the Federal Government must derive directly from the scope of his employment and be actual in character, not implied from appearances or the circumstances of a particular case. *United States* v. *North American Transportation & Trading Co., supra.* An officer's authority to make implied contracts is of course no broader than his power to bind the United States by formal agreement. *Sutton* v. *United States, supra; Baltimore and Ohio R. R.* v. *United States,* 261 U. S. 592, 596, 597. Consequently, even if the guerrilla officers had been agents of the United States, they could not have bound the United States without authorization. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U. S. 579, 585; *Hooe* v. *United States,* 218 U. S. 322, 335–336; *United States* v. *North American Transportation & Trading Co.,* 253 U. S. 330, 338; see also *Hodges* v. *United States, supra.* This Court has stressed that a contractual obligation on the part of

the United States "is not to be presumed in the absence of any action taken by the government or on its behalf indicating such a purpose." *United States* v. *Algoma Lumber Co.*, 305 U. S. 415, 421.

In short, the undisputed premise underlying the instant case is that no one can bind the United States Government on a contract express or implied unless that individual has been expressly or impliedly authorized to do so.

II. NO EXPRESS AUTHORITY WAS EVER CONFERRED UPON THE FILIPINO GUERRILLAS TO PROCURE SUPPLIES FOR THE ACCOUNT OF THE UNITED STATES

Although the petition in the Court of Claims states the legal conclusion that the alleged requisitioning was in accordance with "express or implied authority" and was done through "authorized officers" of the guerrilla unit, it contains no factual allegation of any express authority. The petition does not refer to any particular statute, order or communication which expressly conferred authority upon the particular officers involved. Petitioner's brief makes it clear that he is not alleging or relying upon express authority.

It is his contention that as a matter of law guerrilla officers in the Philippine Army were authorized to requisition supplies and thereby make the United States Government liable. He urges that statutes, rules and regulations of which the court can take notice placed all members of the Philippine Army in such a position vis-a-vis the United States that *by implication* the United States conferred upon them the authority to requisition supplies for the account of the

United States. The thrust of petitioner's argument is that the various Filipino guerrillas had a definite status in relation to the Army of the United States, and that by giving them that status, or by allowing them to have it, the United States Government conferred upon them the implied authority to bind the United States. The guerrillas who purportedly contracted with petitioner had no express authority from the United States, and petitioner does not allege that they had.

III. THE ARRANGEMENTS BETWEEN THE UNITED STATES AND THE PHILIPPINE ARMY WERE NOT SUCH AS TO CONFER BY IMPLICATION AUTHORITY UPON FILIPINO SOLDIERS TO REQUISITION SUPPLIES FOR THE ACCOUNT OF THE UNITED STATES

In deciding whether the arrangements between the United States Government and the Philippine Army guerrillas were such as to confer authority upon the guerrillas to obligate the United States, it is necessary to understand first what the overall relationship was between the United States and the Philippine Army and secondly what the relationship was with respect to the particular matter at issue. It is petitioner's basic contention that by virtue of the phrasing used in placing the Philippine Army under the control of General MacArthur and by virtue of two or three benefits conferred directly upon Filipino soldiers the Philippine Army became a part of the Army of the United States for all purposes. However, the Court of Claims, after extensive consideration and reconsideration, concluded that upon recognition guerrilla units became part of the Philippine Army, that that

Army was not a part of the Army of the United States, and that members of the Philippine Army had no authority, express or implied, to bind the United States in any respect.

This conclusion, we submit, is fully supported by the various pertinent materials. The origin and history of the Philippine Commonwealth Government permit no doubt that the Philippine Army, before it was called in 1941 into the service of United States Armed Forces in the Philippines, was organized and solely maintained by a separate governmental entity, which was not a part of the Federal Government and which had, at that time, many of the attributes of an independent state. Hence, prior to 1941, its officers or men could not have bound the United States to pay for requisitions of supplies consumed by Philippine troops.

Moreover, when Congress provided for the utilization of Filipino troops in the defense of the Islands in the 1934 Independence Act leading to the Commonwealth Government, and when the President called those troops into the "service" of United States forces engaged in that defense in 1941, both intended that Philippine national forces would retain their separate national identity with their own organization, promotion lists, and code of military law, and that they would serve with, but not become a part of, the Army of the United States in the Philippines. After the Filipino forces were called to the defense of the Philippines, they were in fact treated in all respects as a separate national force serving with but not as a part

of the Army of the United States. This being the case, the United States is not bound by contracts made by Filipino irregulars who were retroactively recognized as part of the Philippine Army, but who were never recognized by the United States as a part of the Army of the United States.

A. THE PHILIPPINE ARMY WAS ENTIRELY INDEPENDENT OF UNITED STATES FORCES BEFORE IT WAS CALLED INTO THE SERVICE OF UNITED STATES ARMED FORCES IN THE PHILIPPINES IN 1941

The Filipino Army that was called into the service of United States Armed Forces in the Philippines in 1941 was created and maintained by the Commonwealth of the Philippines, a government which had already attained some degree of independence and was largely autonomous in its internal affairs. The origin and history of the Philippine Commonwealth leave no doubt that prior to 1941 its soldiers could not have contracted on behalf of the United States.[2]

1. *The Creation of the Commonwealth Government*

The United States first acquired sovereignty over the Philippine Islands in 1898 as a result of the Treaty of Paris (30 Stat. 1754; 31 Stat. 1942). From the time of their acquisition from Spain, the Islands had the status of a federal territory, governed by a governor general appointed by the President of the United

[2] Although the Court of Claims made no findings of fact in dismissing the petition in the present case, the facts underlying the present issue, which are not basically in dispute, are set forth in *Victorio* v. *United States*, 91 F. Supp. 748 (C. Cls.), and *Logronio* v. *United States*, 132 C. Cls. 596, as well as in the briefs before this Court.

States, and Philippine residents were United States nationals, although not citizens of the United States. (32 Stat. 691.)

With the passage by the Congress of the Philippine Independence Act in 1934 and the adoption by the Philippines of a Constitution pursuant to that Act in 1935, the status of the Philippines changed to a commonwealth largely autonomous in its internal affairs. The Independence Act enacted by Congress on March 24, 1934 (48 Stat. 456), provided for the immediate drafting of a Philippine constitution, and the prompt establishment of a republican form of government, a popularly elected president, and a representative legislative within the Philippine Islands. Section 10 of the Act provided that the Philippines would receive full independence within ten years after the inauguration of the new government under the Constitution. While the United States retained sovereignty over the Islands during the period prior to full independence, the Act resulted in the creation of what has been called a "semisovereign state with a personality in international law separate and distinct from the United States" (Report of Philippine Independence Commission to the Philippine Legislature, 78 Cong. Rec. 5146–5147); see *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 677.

Under the Independence Act, the new constitution, and implementing enactments, the United States retained control over Philippine foreign affairs, and "citizens of the Philippine Islands" continued to owe allegiance to the United States until complete independence was achieved. Decisions of the Philippine courts construing laws of the United States were also

subject to review by this Court. The practical effect of the new Philippine constitution, however, was to give the popularly elected Philippine government "autonomy" in local affairs insofar as its actions were consistent with the Philippine Constitution. H. Rept. 806, 72d Cong. 1st Sess.[3] As this Court recognized in *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652 (id. at 676):

> Thus by the organization of the new Philippine government under the constitution of 1935, the Islands have been given, in many aspects, the status of an independent government, which has been reflected in its relations as such with the outside world.

See also *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 319–320; *Bradford* v. *Chase National Bank of City of New York,* 24 F. Supp. 28, 35 (S. D. N. Y.); and Hackworth, *Digest of International Law,* Vol. I, p. 493; Vol. II, p. 176.

Under Section 6 of the Independence Act, imports from the Philippines to the United States were subject to customs levy, and Section 8 of the Act required that Philippine citizens be treated as aliens (not as United States nationals) for purposes of immigration and naturalization. Cf. *Barber* v. *Gonzales,* 347 U. S. 637. The powers reserved by the United States during the interim period before complete independ-

[3] House Report 806 (72d Cong. 1st Sess.) on H. R. 7233, a bill that became the 1934 Independence Act without material change, states that the Act gave the Commonwealth "complete autonomy as to domestic affairs, subject only to certain reservations intended to safeguard both the sovereignty and the responsibilities of the United States" (75 Cong. Rec. 6445–6448).

ence were retained primarily to protect the interests of the United States citizens within the Philippines, as well as the rights of Philippine citizens themselves embodied in the new constitution. See *Victorio* v. *United States*, 91 F. Supp. 748, 749, 750; *Logronio* v. *United States*, 132 C. Cls. 596, 599–605.

2. *The Creation of the Philippine Army*

Consistent with the Commonwealth's special status, the Philippine Constitution, adopted in 1935, provided for the establishment and organization of the Armed Forces of the Philippines.[4] Section 2 of Article II, a part of the Constitution's "Declaration of Principles," provided that all Philippine citizens were obligated to render military service, and the President of the Philippine Government was designated as Commander-in-Chief of the Philippine Armed Forces (Article VII, Phil. Const., section 11 (2)). (App. C, *infra*, p. 85.) The National Defense Act enacted by the Philippine Legislature in 1935 (Commonwealth Act No. 1, December 21, 1935) was designed to carry into effect the constitutional provisions providing for the establishment of Philippine military forces. Title 2 of that Act (App. C, *infra*, p. 86), dealing with mili-

[4] Congress had provided in 1918, when the Philippines still had the status of a United States territorial possession, that members of the Philippine militia "may be called into the service of the United States" and "members thereof may be drafted into said service" and that the members when called or drafted would be "upon the same footing" as United States national guardsmen (Act of January 26, 1918, 40 Stat. 432, 32 U. S. C. 84 1940 Ed.). The Philippine militia, a shortlived organization organized in 1917–1918, was no longer in existence at the time the Islands became a commonwealth in 1935. 75 Cong. Rec. 7856, 7858.

tary organization, established an "Army of the Philippines" consisting of a regular and reserve force. Section 22 (App. C, *infra*, p. 87) provided that all commissioned officers in the army must be Philippine citizens and that priority of appointment should be given to graduates of the Philippine Military Academy. This Act also established a general staff corps headed by a chief of staff reporting directly to the President of the Commonwealth, and provided in detail for the organization of the Philippine Army and the appointment, training, and promotion of army personnel (App. C, *infra*, pp. 85–88).

Beginning with the passage of the National Defense Act in 1935, the Commonwealth Government undertook to organize and equip a Philippine army as an entirely separate and independent military force adequate to provide for the defense of the Philippine Commonwealth against "invasion, insurrection, or rebellion" (Phil. Const. Article VII, Section 11 (2)).[5] By 1940, this army had developed into a military force of approximately ten regular and reserve divisions, with its own equipment and officers, and supporting air and naval detachments. Louis Morton, *The Fall of the Philippines—The War in the Pacific: United States Army in orld War II*, p. 13.[6]

From 1935 to 1941 General Douglas MacArthur, who had retired as United States Army Chief of Staff,

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[5] The Philippine Legislature appropriated funds for the support of the Philippine Army in each year from 1937 to 1941. Commonwealth Acts Nos. 245, 300, 446, 555, 654, Vols. 2–5, Public Laws of the Commonwealth.

[6] This book, the official Army history of the early stages of the Philippine campaign, is cited hereafter as "Morton". Petitioner

served at the request of President Quezon as military adviser to the Philippine Government. While there was of course cooperation between the Philippine Department, which was the United States Army command in the Islands, and the Office of the Military Advisor, there was no official connection between the two. Morton, p. 9. In fact, in the spring of 1941, the commanding general of the U. S. Philippine Department felt obliged to request War Department permission to include representatives of the Commonwealth Government in conferences directed toward improving the defense of the Islands. Morton, p. 15.[1]

Both the nature of the Commonwealth Government and the history of the Philippine Army, as we have detailed them, leave no doubt that that army which

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has reprinted selected excerpts from this work. (Pet. Br. App. pp. 24b–40b). A less broken account conveys a clearer picture. The origin and development of the Philippine Commonwealth Army and the events leading to the calling of that Army to the defense of Philippines are covered in Chapters I and II of Morton. For the convenience of the Court ten copies of this book have been made available at the Clerk's office for the use of the Court.

[1] The complete separation of the two armies is demonstrated by the way in which each treated service in the other. Upon the establishment of the Philippine Army, the President of the Commonwealth could fill vacancies in any commissioned grade with officers of the Officers' Reserve Corps, U. S. Army, but only with such of those officers as prior to their appointment in the Army of the Philippines had "legally and honorably severed their connection with the active elements of the Army of the United States * * *". Philippine Commonwealth Act No. 1, Title II, Article I, Sec. 22 (c), App. C, *infra*, p. 87.

On the American side, the Judge Advocate General held that an officer in the Officers' Reserve Corps, Army of the United States, could not retain that commission if he accepted a Philippine Army commission for the reason that the offices were inconsistent. JAG 291.2, January 17, 1936.

was "called into the service" of the United States Armed Forces in the Philippines in July 1941 had been organized and maintained by a separate political entity. Prior to July, 1941 the status of the Philippine Army was such that its members had no authority whatsoever vis-a-vis the United States. Petitioner does not contend that at that time soldiers of the Philippine Army had any more authority to bind the United States than did soldiers in the army of a foreign government. It is petitioner's contention that the military orders and commands related to placing the Philippine Army under the unified command of General MacArthur merged the Philippine Army into the Army of the United States and that the United States thereby conferred, by implication, authority upon the Filipino soldier to bind the United States in whatever way an American soldier could. The fact is, however, as we shall now show, that throughout the war the Philippine Army retained its separate national character as an army of the Philippine Government and was never merged with the Army of the United States.

B. THE PHILIPPINE ARMY RETAINED ITS SEPARATE NATIONAL IDENTITY WHILE SERVING WITH UNITED STATES ARMED FORCES IN THE PHILIPPINES

The Philippine Constitution, pursuant to Section 2 (12) of the Independence Act of 1934, expressly recognized the right of the United States prior to complete independence "to maintain military and other reservations and armed forces in the Philip-

pines[*] and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines" (App. C, *infra*, pp. 85–86).[*]

On July 26, 1941, the President of the United States, acting on the recommendations of Secretary Stimson and General Marshall, and recognizing that an "emergency" situation existed in the Western Pacific, stated in a proclamation that:

> * * * under and by virtue of the authority vested in me by the Constitution of the United States, by Section 2 (a) (12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of

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[*] The military forces of the United States in the Philippines in 1941 constituted the Philippine Department of the United States Army, made up of Regular Army units, including Philippine Scout Units staffed by Filipino troops with Filipino and American officers. Petitioner (Br. 12, 13) confuses the Philippine Department, a territorial command or subdivision of the American Army, with the Army of the Commonwealth of the Philippines, an entirely separate military organization. See Morton, p. 9, *et seq.* Following the President's order, a new Command was established, United States Army Forces in the Far East (USAFFE) with General MacArthur recalled to duty as commanding general. The Philippine Department was placed under this command. Philippine Army units were at intervals also placed under the USAFFE command, a process which had not been completed at the time of the Japanese attack on the Philippines, December 8, 1941. See Morton, p. 14, *et seq.*

[*] This provision differed significantly from the 1918 enactment which had been in effect prior to the Independence Act and which authorized the drafting of Philippine militiamen as national guardsmen. See fn. 4, *supra*, p. 18; *infra*, pp. 24–27.

> the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the Armed Forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Commonwealth of the Philippines [6 Fed. Reg. 3825, Pet. 10a].[10]

On the same day, General Douglas MacArthur was designated by the Secretary of War as Commanding General, United States Army Forces in the Far East (USAFFE), with headquarters in the Philippines, and as the general officer referred to in the President's order. Units of the Philippine Army were subsequently called "into the service of the Armed Forces of the United States in the Philippines" by General MacArthur. (Pet. 17a.) App. E, *infra*, p. 99, *et seq.*

The fact that these orders did not merge the Philippine Army into the Army of the United States, as contended by petitioner, is apparent from the legislative authority under which they were made, from contemporaneous statements made by the responsible executive and military authorities, and from the manner in which the two armies actually operated.

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[10] The order provided that it would "take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War." (Pet. 11a.)

1. *The legislative definition of the Army of the United States did not include the Philippine Army*

Congress had defined the constitutional land forces of the United States (the "Army of the United States") as consisting of the "Regular Army, the National Guard of the United States, and the Army Reserve" (10 U. S. C. 1a, 1b, App. A, *infra*, p. 55).[11] In addition, the National Guard of the "several states and territories" becomes a part of the Federal Army "when in the service of the United States." The term "territories" was defined to exclude the Philippines. (32 U. S. C. 4c.)

Congress had provided in 1918 that the Philippine militia, which had been organized in 1917, could be "called into the service of the United States" and that "members thereof may be drafted into said service" in the "manner" and upon the same "footing" as members of the National Guard when in Federal service. (32 U. S. C. 84, 1940 Ed., App. A, *infra*, p. 57.) The Philippine territorial militia, however, was no longer in existence when the Commonwealth Government was founded in 1935 (75 Cong. Rec. 7856, 7858; Quezon, *The Good Fight*, p. 165; fn. 4, *supra*, p. 18).

As indicated above the Philippine Independence Act of 1934 contemplated a gradual transition towards complete independence over a ten-year period, after which the Philippine Government would assume full control over its international relations and sole re-

[11] This is an amendment of a former definition (10 U. S. C. 2) originating in 1916 (39 Stat. 166) which was modified but not substantially changed in 1950 (64 Stat. 271).

sponsibility for the defense of the Islands. During the interim period, however, the United States continued to bear heavy responsibilities in the Western Pacific, among them the defense of the Philippines. The Independence Act (and pursuant thereto, the Philippine Constitution) preserved the right of the United States to maintain "armed forces" in the Philippines, and "recognized" the United States' right to "call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines." App. C, *infra*, pp. 85–86.

The purpose of this provision is apparent from its language. In carrying out its responsibility of defending the Philippines, the United States retained the right of maintaining troops within the borders of what in many respects had become, or was fast becoming, an independent country. In the event of threatened aggression the United States was entitled to call upon the organized forces of the Philippine Government to assist American forces stationed in the Philippines in defending the Islands.

Since the Philippines were no longer a federal possession, however, the Independence Act, unlike the 1918 statute, did not provide that such forces would "in all respects while therein be upon the same footing with members of the National Guard so called or drafted * * *" 32 U. S. C. 84, 1940 ed., App. A, *infra*, p. 57. This contrast between the Independence Act and the earlier language indicates that Congress did not intend members of the Philippine Army, if

called up, to have the same status as American soldiers."[12].

Further indication that Congress did not authorize the Philippine Army to become part of the Army of the United States is the apparent territorial restriction on where the Philippine forces could be used. The 1918 statute provided that Philippine militia could be called "into the service of the United States" and made clear that Filipino troops could be taken into the Army of the United States for service anywhere. App. A, *infra*, p. 37. The Independence Act was quite different. It required the Philippine Islands to recognize the right of the United States to maintain armed forces in the Philippines and, upon order of the President, to call into the service *of our armed forces in the Philippines* all military forces organized by the Philippine Government (Pet. Br. App., p. 2a). The Philippine units were not to be in the service of

[12] Under Article I, Section 8 of the Constitution, Congress alone has the power to give a military unit the status of being part of the Army of the United States. Its definition of the Army of the United States (10 U. S. C. 1a, 1b) has never at any time included the Commonwealth Army. Congress also has the sole authority to provide for organizing, arming and disciplining the militia "and for governing such Part of them as may be employed *in the Service of the United States*". Art. I, Sec. 8. (Emphasis added.) This constitutional phrase has been used in statutes relating to the calling up of the National Guard (as well as in the earlier statute covering the calling up of the Philippine militia) since the early 1900's. Avoidance of the Constitutional language in the Philippine Independence Act, by itself, indicates that Congress in that Act did not intend to amend the definition of Army of the United States so as to include the organized Philippine forces when called to the defense of the Philippines.

the United States, subject to use anywhere, but in the service of whatever armed forces in the Philippines the United States should maintain. Thus, by statute, Philippine units called up under the Independence Act had a different status from units within the Army of the United States.

2. *At the time when the Philippine units were called up, the Philippine Army was intended to retain its separate national status*

Thus far, we have urged that the Philippine Constitution and the Independence Act contemplated that Philippine troops would retain their national identity if the United States called upon the Philippine Commonwealth Army to aid it in the defense of the Philippines. In addition, the contemporaneous documents make it clear that the Executive meant to preserve the national character of the Commonwealth troops when in July 1941 they were called into the "service of the United States Armed Forces." The understanding reflected by these documents, as well as the steps taken by the Executive Branch to preserve the Commonwealth troops' identity as a national military force when they were called up in 1941, constitute an authoritative interpretation of the statute fully supporting the conclusion of the Court of Claims. Consequently, even assuming that the Executive had the power to call up the Filipino forces *as part of the American Army,* the clear fact is that it did not exercise that power, but rather acted to preserve the separate national identity of the Commonwealth Army.

In the period immediately preceding and following the President's order, every responsible official who had occasion to refer to the calling up of the Commonwealth Army expressed the clear intention that the Philippine forces would retain their national identity.

The earliest recommendation to call up elements of the Philippine Army came from General Grunert, Commanding General, Philippine Department (a part of the American Army), in April 1941. He prepared the plans on which the action was based. His plans provided "that the mobilization process and machinery will remain in the hands of the Philippine Army." App. B, *infra*, p. 82.

In the War Department Memorandum which recommended the action taken by the President, General MacArthur's views were summarized in the following terms:

> "In a personal letter to the Chief of Staff, dated July 7, 1941, General MacArthur concurs, in general, with the views of the Commanding General, Philippine Department. He states the importance of having the Philippine Army retain its complete identity and operation under its own laws and regulations." [App. B, *infra*, p. 82.]

This memorandum was approved by the Chief of Staff, General George C. Marshall, and by the Secretary of War prior to the issuance, by the President, of his order of July 26, 1941. App. B, *infra*, p. 84.

Shortly after the Presidential order, and the Sec-

retary of War's order of the same day designating General MacArthur as the general officer who would ta' e command of both the Philippine Department and of Philippine Army units called up, General MacArthur's headquarters issued a public announcement stating:

> "All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own ration, and their own code of military law." [H. Doc. 111, 78th Cong., 1st Sess., 1943, App. B, *infra*, p. 78.]

In November 1941 the Chief of Staff, General Marshall, appeared before Congress to explain the status of the Philippine Army and the necessity of a special appropriation:

> * * * This Army, being an Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States. [Hearings before the Subcommittee of the House Committee on Appropriations on the Third Supplemental National Defense Appropriation Bill for 1942, November 18, 1941, 77th Cong., 1st Sess., p. 47. App. B, *infra*, p. 78.]

These contemporaneous statements by the very officials who were responsible for issuing the orders which placed the Philippine Army under the command of General MacArthur provide conclusive evidence that the United States had no intention of making the

Philippine Army an arm of the Federal Government.[12a] This is particularly significant since petitioner relies upon these very orders as merging the Philippine Army with the Army of the United States.

3. The two armies were not in fact merged

General MacArthur had recommended that the Philippine Army should keep its national identity as an army of the Philippine Government. General MacArthur was placed in command over both the Philippine Department (of the American Army) and over those units of the Philippine Army which were to be called into service under the President's order. It is not surprising that his recommendation as to the separate identity of the two armies was fully carried out.

Units of the Philippine Army maintained their separate identity, not only as a distinct unit but as a part of the Philippine Army. They kept their own uniforms. They kept their own organizational structure. For example, the Philippine Army has not only first and second lieutenants but also third lieutenants (App. C, *infra*, p. 87); a rank to which nothing in the American Army corresponds. Such officers were not third lieutenants in the Army of the United States—there was no such thing—but third lieutenants in the Philippine Army.

[12a] See also the statement of the Resident Commissioner of the Philippine Islands to the United States, October 9, 1941: "I understand they are not considered Federal troops; they are a separate unit, but under the United States Army." App. E, *infra*, p. ~~99, et seq.~~ 106.

Members of the Philippine Army were not subject to the same military laws as applied to those in the American Army. Until war was declared the Philippine Army had no courts-martial. Even after units of the Philippine Army were placed under General MacArthur's command, Philippine Army headquarters was responsible for discipline and punishment. This was in deference to the fact that "the Philippine Army retained its national integrity". Morton, p. 28.

In discussing the status of the Filipino guerrillas the Supreme Court of the Philippines said that they:

> * * * became members of the Philippine Army amenable to the [Philippine] Articles of War. The Bolo Area [unit] as has been seen, was a contingent of the 6th Military District which, as has also been pointed out, had been recognized by and placed under the operational control of the United States Army in the Southwest Pacific [Command]. [*Ruffy* v. *Chief of Staff, Philippine Army,* 75 Phil. Rep. 875, 883.]

During the war and after the liberation the United States continued to recognize the separate status of the Philippine Army. On May 7, 1942, General Jonathan Wainwright tendered "the formal surrender of all American *and Philippine Army troops* in the Philippine Islands," to the Japanese forces (Pet. Br. App. p. 57b, emphasis added), and the Philippine Commonwealth Government was forced to leave the Philippines as a result of the Japanese occupation of the Islands. Although all organized resistance to the Japanese forces ceased within a short time after Gen-

eral Wainwright's surrender, many Filipino and American individual soldiers refused to abandon the struggle and, retreating into mountainous regions, banded into irregular units to continue the fight against the Japanese invader. These guerrilla bands, which for the most part were out of touch with organized American forces, obtained their supplies from the local populace. After the Commonwealth Government was re-established in the Islands in October 1944 following the American liberation, President Osmena issued Executive Order 21 (Pet. Br. App., pp. 59b–61b) declaring that persons who were "actively serving in recognized military forces in the Philippines are hereby considered to be on active service *in the Philippine Army.*" A recognized military force was one under a commander who had been appointed or recognized by the Commander-in-Chief Southwest Pacific Area (General MacArthur). This order, relied on heavily by petitioner, demonstrates, on the contrary, the separate identity of the Philippine Army.

President Osmena's order did not intend to, and could not, delegate authority to the American commander to recognize the Philippine guerrillas as part of the Army of the United States, for his order, of course, could not determine a status which is entirely governed by American law.

Under President Osmena's order a large number of Philippine guerrilla units were recognized by General MacArthur as part of the Philippine Army. In every case the orders stated that the guerrillas were recog-

nized as "officers and enlisted men of the Philippine Army" (App. B, *infra*, pp. [illegible]; see *Logronio* v. *United States*, 132 C. Cls. 596, 611, 612).

As a matter of fact the Philippine Army was never merged into the Army of the United States, but was a separate military force identifiable at all times and operating under different rules, in different uniforms, and in most cases, of course, in a different language. Morton, p. 27. Thus the Philippine Army was comparable in its relation to the American Army to those Australian, British, Dutch and Chinese units which, although supplied by the United States, retained their national identity while fighting under General MacArthur's command in the Pacific.[13] Again, in the Korean conflict, similar relationships were established between General MacArthur and the South Korean, Brazilian, Turkish and other units which fought under his command and were supplied partially from American sources but in each instance retained their national identities.

4. *Particular benefits conferred upon Filipino soldiers by the United States did not convert the Philippine Army into the Army of the United States*

In 1942 and 1943 the Attorney General concluded that the National Service Life Insurance Act and the Missing Persons Act should be so construed that their benefits should be available to members of the Army of the Philippines. 40 Ops. Att'y Gen. 185,

[13] See Robert Ross Smith, *The Approach to the Philippines, The War in the Pacific, United States Army in World War II*, pp. 14–16.

281. Although throughout the war the Filipino troops were paid by their own government, the United States was turning over funds to the Commonwealth Government with which to meet the legitimate costs of the Philippine Army. This was done for the entire period in which the Philippine Army was fighting with the United States forces. The Attorney General's opinions permitted the United States to make these benefits available directly to the Filipino soldiers without requiring legislative action by the Philippine Government.[13a]

[13a] Prior to the Attorney General's first opinion, the War Department had already informed the Commanding General in the Philippines that members of the Philippine Army Air Corps were entitled to National Service Life Insurance; radiogram applications for insurance had been received from Cavite, Philippines (letter dated April 22, 1942, from the Administrator, Veterans Administration, to the Attorney General), and on the date of the opinion, April 27, 1942, Corregidor was under seige. Despite some general language in that opinion (40 Ops. Att'y Gen. 185, 187) it was later construed as being a decision that members of the Army of the Philippines were "considered" in active service in the land forces of the United States "for the purpose of granting insurance under the National Service Life Insurance Act of 1940, as amended" 40 Ops. Att'y Gen. 281, 282. Further, the opinion of the Solicitor of the Veterans Administration with which the Attorney General concurred was a narrow one to the effect that such soldiers "are to be considered" in the service "within the meaning of that term as used in the National Service Life Insurance Act". That opinion went on to state:

"It is realized that upon the ultimate independence of the Philippines the question of expense, particularly of future pensions, etc., may be one for political adjustment but in the meantime entitlement is to benefits provided by the United States." (Opinion of the Solicitor, Veterans Administration, March 24, 1942.)

Congress ratified these opinions in the 1946 Appropriations Act (and a 1947 amendment to it), but made it clear that such benefits were an exception. That Act provided:

> * * * service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof, except benefits under (1) * * * (2) * * * (3) * * * [60 Stat. 6, 14; 38 U. S. C. 38; 61 Stat. 455.]

The three exceptions were the National Service Life Insurance, Veterans Administration payments for service-connected disability or death, and payments under the Missing Persons Act.

Those three [14] respects in which the United States Government gave direct benefits to members of the

[14] Petitioner also contends that Philippine guerrillas were considered to have been in the military forces of the United States for the purposes of being eligible for a more expeditious naturalization procedure, citing *Petition of Agustin*, 62 F. Supp. 832, (Pet. Br. 21.) Agustin, however, was not only a guerrilla leader but was later made a colonel in the United States Army, receiving allowances and salary as such.

Philippine Army did not change its status from that of a distinct national force. These benefits did not merge the Philippine Army into the American Army nor did they, by implication, confer upon members of the Philippine Army authority to bind the United States. On the contrary, the language of Congress quoted above makes it explicit that members of the Philippine Army were not to be considered as being part of the American Army for any other purpose.

From the extended discussion above it is apparent that the United States at all times treated the Philippine Army as a distinct national force under the Philippine Government. The Philippine Army was not given such a status that there was, by implication, a conferring of authority upon members of that Army to contract directly on behalf of the United States. The general position of the Philippine Army was one independent of that of the Army of the United States.

C. WHATEVER THE STATUS OF THE PHILIPPINE ARMY IN GENERAL, WITH RESPECT TO PROCUREMENT AND THE CREATION OF FINANCIAL LIABILITY THE ARRANGEMENTS WERE SUCH THAT NO ONE IN THE PHILIPPINE ARMY HAD IMPLIED AUTHORITY TO OBLIGATE THE UNITED STATES.

We have shown that the status of the Philippine Army was comparable to that of an army of a foreign government under the command, for the time being, of an American general. From the differences pointed out, one can safely say that, at the least, it would be a mistake to conclude that the Philippine Army and the Army of the United States were one and the same thing, that Filipino soldiers had the

same rights and powers vis-a-vis the United States that American soldiers had. We would go further and conclude from the general relationship between the United States and the Philippine Army that they were entirely separate entities, and their relationship was akin to that of American and British troops during the war.

It might be urged, however, that the Philippine Army was not in fact the army of a separate government; that it was in an anomalous position; that for some purposes it was treated as though it were part of the American Army and that for other purposes it was not. It could be suggested that to determine the status or authority of the Philippine Army for a particular purpose one must look not at its overall position but rather to the particular purpose to see what authority was conferred upon the Philippine Army in that respect. For instance, it might be that while one could not imply authority in the Filipino soldier to requisition supplies for the account of the United States from the general position of the Philippine Army, one could infer such authority from the particular arrangements that had been made as to procurement and as to the creation of financial liability. This is not petitioner's contention, but it deserves consideration.

A brief inspection of the status of the Philippine Army with respect to procurement and the creation of financial liability may indicate why petitioner has chosen not to focus on this point but rather to contend that if the Philippine Army was treated as part

of the armed forces of the United States for one purpose it must be so for all purposes (Pet. Br. 24).

1. The financial arrangements between the United States and the Philippines provided that, in recognition of the growing independence of the Philippine Government, all procurement by the Philippine Army was to be for the account of the Philippine Government, and that the United States would provide financial assistance on a government-to-government basis. In consequence ~~was that~~ individuals in the Philippine Army, regular or irregular, had no authority to create a direct obligation on the United States Treasurer.

In October 1941 Colonel R. S. Moore, a finance officer, in explaining to Congress why expenditures for the Philippine Army should be exempt from control by the General Accounting Office, pointed out that "The Army of the Philippines is organized, paid, and administered in accordance with Philippine Commonwealth laws and regulations." See App. E, *infra*, p. 99 *et seq.*

In November 1941 General Marshall, in requesting military appropriations, informed Congress that the Philippine Army could not "under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States" because it was "an Army of the Philippine Commonwealth Government." *Supra*, p. 29; App. B, *infra*, p. 78. Recognizing the special status of the Philippine Army, Congress, when it appropriated $269,000,000 for the support of that Army on December 17, 1941, provided that the funds should

be available "for payment to the Government of the Commonwealth of the Philippines." [15]

The language of this Act is of critical importance. It established the legal framework for all subsequent financial aid to the Philippines. It did not provide that the United States should spend the money for the benefit of the Philippine Army or procure supplies through the Philippine Army. On the contrary, the funds were to be turned over to the quasi-independent Philippine Government. The relevant portion of the Act reads as follows:

> For *all expenses* necessary for the mobilization, operation, and maintenance of the Army of the Philippines, *including expenses connected with calling into the service of the armed forces of the United States* the organized military forces of the Government of the Commonwealth of the Philippines, *and expenditures incident*

[15] A separate appropriation would have been unnecessary if the Philippine Army became, as petitioner claims, merely one more divisional unit of the Army of the United States when it came under United States operational command, for funds for its necessities could have been provided for in, and disbursed from, ordinary Army appropriations enacted in the same legislation.

The separate appropriations for the Commonwealth Army from 1941 to 1946 have further significance when they are compared with the appropriations for the American Army. Appropriations for the American Army are broken down in considerable detail—so much for ordnance, so much for quartermaster, etc. See, *e. g.*, December 1941 Appropriations Act (55 Stat. 810). At the same time, the appropriation for the Philippine Army was a lump sum "for payment to the Government of the Commonwealth of the Philippines." It is at least likely that Congress would have provided a breakdown within the funds for the Philippine Army if it had regarded that force as a unit of the Army of the United States.

> *to pay, allowances, operation, maintenance, and other activities of units* and personnel of said organized military forces, and for the emergency mobilization and training of such forces, may be made without regard to the provisions of law regulating the expenditure of or accounting for funds of the United States but shall be expended and accounted for in a manner prescribed by the President of the United States, $269,000,000, to remain available until June 30, 1943, which shall be available *for payment to the Government of the Commonwealth of the Philippines* upon its written request, either in advance of or in reimbursement for all or any part of the estimated or actual cost, as authorized by the Commanding General, United States Army Forces in the Far East, of necessary expenses for the purposes aforesaid, * * *. [55 Stat. 813 (emphasis added).]

Subsequent appropriation acts continued throughout the war to provide separate appropriations for the expenses of the Philippine Army to be disbursed directly to the Philippine Government. 56 Stat. 628; 57 Stat. 365; 58 Stat. 591; 59 Stat. 401.[16]

Executive Order No. 9011, covering the manner of expending and accounting for these appropriated funds, was issued by the President on January 3, 1942, and is reprinted in Appendix B, *infra*, p. 59. It makes even more clear that expenditures by Philippine officers were to be a claim on the Philippine treasury and that United States funds were to go into the Philippine treasury to be disbursed from there by officers

[16] Only token amounts were appropriated during the period when the Japanese were in control of the Philippine Islands.

of the Philippine Government, acting with the approval of the Commanding General of the United States Army Forces in the Far East. The Executive Order provided:

> Advances or reimbursements made to the Government of the Commonwealth of the Philippines * * * will be accounted for on vouchers evidencing the amounts advanced to or paid as reimbursement to the Government of the Commonwealth of the Philippines, but such vouchers need not be supported by vouchers paid by disbursing officers of the Army of the Philippines.
>
> * * * * *
>
> Necessary expenditures from funds in the Philippine Treasury for the purposes authorized by the act of December 17, 1941, will be made by disbursing officers of the Army of the Philippines on the approval or authority of the Commanding General, United States Army Forces in the Far East * * * and such expenditures will be accounted for in accordance with procedures established by Philippine Commonwealth laws and regulations. [7 F. R. 145, App. B, *infra*, pp. 59–60.]

It is difficult to see how the United States could have made it more explicit that expenditures "by disbursing officers of the Army of the Philippines" were to be made "from funds in the Philippine Treasury."

To be sure, funds in the Philippine Treasury advanced by the United States could be expended only "on the approval or authority" of the Commanding General USAFFE. The United States retained this power to make sure that aid given was used only for the purposes authorized in the statute. The United

States has retained comparable authority to review economic and military assistance given to other governments." While giving great responsibility to the Philippine officers, the United States did not give them an absolutely free hand to use as they saw fit funds advanced by the United States to the Philippine Government.

Moreover, since, as against the funds advanced to the Philippine Treasury, the United States expressly retained the right of approving expenditures, it hardly

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" Section 142 (b) of the Mutual Security Act of 1954 (22 U. S. C. 1852 (b), a revision of Section 115 (b) (6) of the Economic Cooperation Act of 1948, 22 U. S. C. 1513) provides that the "counterpart" funds resulting from United States aid and held by states receiving assistance from the United States under that Act can be disbursed only for purposes agreed to by the United States. The Economic Cooperation Agreement between the United States and the United Kingdom, as a result of this provision, provides that counterpart funds can be disbursed by the British Government only "for such purposes as may be agreed from time to time with the Government of the United States of America" (Art. IV (6), TIAS 1795, signed July 6, 1948, 62 Stat. 2596, 2600). The Agreement with France contains the same provision (Art. IV (6), TIAS 1783, signed June 28, 1948, 62 Stat. 2223, 2229). Similarly, Section 142 (a) (10) of the 1954 Act (22 U. S. C. 1852 (a) (10)) requires foreign states receiving defense aid from the United States to "permit continuous observation and review by United States representatives of programs of assistance authorized under this title, including the utilization of any such assistance * * *". Pursuant to this requirement, Article VIII of the Mutual Defense Assistance Agreement with the Federal Republic of Germany, for example, provides that the German Government must accord designated American personnel "authority and facilities to carry out continuous observation and review of operations under the program of assistance provided under this agreement, including the utilization of military assistance furnished by the Government of the United States of America." (TIAS 3443, June 30, 1955.)

seems likely that the United States intended to confer authority on the Philippine Army to requisition supplies on its behalf and thereby create a direct liability on the United States Treasury beyond the appropriation and beyond the funds advanced to the Philippine Government.

It follows that, under the appropriation acts and the Executive Order, a regular purchasing officer of the Philippine Army, buying supplies requested by his commanding officer, did not have the authority to bind the United States. He could at most create an obligation on the Philippine Treasury; if the expenditure were made on the approval or authority of the Commanding General, USAFFE, it could be charged against funds in the Philippine Treasury advanced by the United States.

Petitioner contends that the guerrillas had authority to make contractual obligations, binding on the United States, by virtue of the fact that they were in the Philippine Army. But that status conferred no such authority. On the contrary, the very fact that the guerrillas were in the Philippine Army established that at the most they would have had authority to create an obligation on the Philippine Government.

It may be contended that military necessity gave the guerrillas authority which they did not otherwise have. It is true that there is sometimes implied authority in a subordinate officer to deal with emergency conditions and in doing so to obligate his principal. See *Mitchell* v. *Harmony*, 13 How. 115, 133; *United States* v. *Caltex (Philippines), Inc.*, 344 U. S. 149,

153. The necessity of the agent, however, cannot change the identity of his principal nor establish a principal-agent relationship which does not otherwise exist. No matter how seriously in distress a French soldier might be, he could not contract on behalf of the United States. Further, the petition here makes no allegations of emergency conditions such as to bring the claim within the rule of *Mitchell* v. *Harmony*.

2. The financial liabilities that were created by guerrilla procurement, and the moral obligation of the United States to help the Philippine Government meet those liabilities, were recognized by both armies and by both governments following the liberation of the Philippines. That the regulations governing the disbursement of funds applied to emergency requisitions and guerrilla claims as well as to routine procurement was understood by both governments, as evidenced by their conduct.

Following the liberation of the Islands, and the decision by President Osmena that recognized guerrilla units were part of the Philippine Army, there were hundreds of thousands of claims for back pay and allowances. The strength of the Philippine Army prior to the Japanese occupation was at most 120,000. Morton, p. 27. After the liberation, ten times that number claimed to have been "actively serving in recognized military forces." Approximately 1,200,000 claims were filed for guerrilla recognition. (App. B, *infra*, p. 73.) The United States Army Claims Service requested instructions as to what action, if any, they should take with respect to the

various types of guerrilla claims. (Pet. Br. App. 71b–76b.) General MacArthur concluded that, in view of the recognition by President Osmena that guerrilla units could be considered part of the Philippine Army, he should approve as an appropriate expenditure, against the funds advanced to the Philippine Government for that Army, certain categories of claims arising out of guerrilla conduct. (Pet. Br. App. 77b.) The authority to approve such claims was delegated to the Claims Service, which began the enormous task of processing these claims. Some 267,000 persons were found to have been bona fide, full-time guerrillas, making them eligible for back pay and allowances as members of the Philippine Army. (App. B, *infra*, p. 74.) Some 470,000 separate claims were filed for services and supplies provided to the guerrillas. (App. B, *infra*, p. 74.) The method of handling these claims was summarized by the Court of Claims in *Victorio* v. *United States*, 91 F. Supp. 748, 752:

> Claims for reimbursement for supplies furnished to recognized guerrilla units were processed in the following manner: The United States Army investigators checked and verified the claims. Those found to meet the requirements set out in circular orders by General MacArthur were approved by the Claims Service which forwarded the approved claim and supporting voucher to the Chief of Staff, Philippine Army, attention of the Finance Officer, for payment from funds delivered to the Philippine Government by virtue of the various appropriation acts, Army of the Philip-

pines, above set out. The American Government never paid the claimants directly but the Philippine Government presumably paid the individual claimant but did not account to the United States Government as it was not required to do so.

Of a total of over $337,000,000 used from appropriations for the Philippine Army, more than $285,000,000 was transferred to the Philippine Government for the Philippine Army by the United States after March 1945 when guerrilla units were first recognized, and was thus made available for meeting the various types of guerrilla claims.[18]

The entire conduct of both armies and both governments confirms the fact that under the arrangements made by the United States there was no authority in any member of the Philippine Army, express or implied, to create a direct obligation against the United States Government.[19] Rather, the United States assumed and met a moral obligation to support the Philippine Army by advancing sums to the Philippine Government and then approving, individually or by classes, expenditures from those funds.

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[18] A letter from the Assistant Judge Advocate General to the Attorney General dated September 7, 1956 gives the total amount of the appropriation, which did not lapse, as $337,351,889.28. Of this amount $285,434,000.00 was transferred to the Philippine Government between March 27, 1945 and July 6, 1948. Apparently the first recognition of individual guerrilla units was on March 26, 1945. (Pet. Br. App. p. 61b.)

[19] Petitioner has suggested that the guerrillas here involved received authority by virtue of the Military Requisition Act of 1941 (55 Stat. 742) (Pet. Br. 37–43), under the Hague Conventions and principles of international law (Pet. Br. 34–35, App. pp.

IV. IN THIS MATTER ARISING FROM MILITARY DECISIONS AND AFFECTING THE FOREIGN AFFAIRS OF THE UNITED STATES, THE COURT SHOULD BE SLOW TO DEPART FROM THE POSITION TAKEN BY THE EXECUTIVE BRANCH

Petitioner has suggested that the decision followed in this case has resulted in resentment toward the United States (Pet. 10), and he quotes at length the views of the representative of a foreign government, both as to the merits of the case and as to its possible international importance. (Pet. 11–13, 18a–21a.) It is submitted that considerations relating to the international ramifications of the case dictate that the Court should be slow to depart from the view which the Executive Branch has taken.

81b–83b), and under the Rules of Land Warfare (Pet. Br. 35–36). None of these appears to merit extended discussion. The Military Requisition Act of 1941 authorized the President under certain circumstances to requisition personal property. The regulations issued by the President under that statute required advance approval and other procedural steps which would preclude its being applicable to guerrilla procurement. See 8 Fed. Reg. 12068. The Hague Conventions and the principles of international law referred to by petitioner have no bearing on the case since they deal with rights as between governments. No one disputes the fact that the United States had the right to take property in the Philippines for a public purpose. This right was expressly reserved in the Independence Act and in the ordinance to the Philippine Constitution. App. C, *infra*, pp. 85–86. The question is whether the various transactions in the Philippines among Filipinos were authorized takings by the United States Government. International authorities and conventions do not deal with the subject of delegating authority from the United States to particular individuals. The Rules of Land Warfare, referred to by petitioner, is an Army Field Manual which explains the Hague Conventions and the rules of international law. It is not an operative command or order. It does not delegate authority from the government to any one.

For reasons well grounded in the distribution of functions in our Government (*United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319–321), this Court has always insisted that American courts "should not so act as to embarrass the executive arm in its conduct of foreign affairs." *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 35; *United States* v. *Lee*, 106 U. S. 196, 209; *Ex parte Peru*, 318 U. S. 578, 588. The government recognized by the President as representative of a foreign sovereign state will be accepted without question (*Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *United States* v. *Belmont*, 301 U. S. 324, 330; *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 137–138), as will the "underlying policy" which governs the question of recognition by the United States (*United States* v. *Pink*, 315 U. S. 203, 229). Decision as to the nation which is sovereign over a particular piece of territory is also left to the executive. *Jones* v. *United States*, 137 U. S. 202, 212; *Foster* v. *Neilson*, 2 Pet. 253, 307–309; *Pearcy* v. *Stranahan*, 205 U. S. 257, 265. A certification by the State Department that a foreign vessel, sued in our courts, is state-owned and immune from seizure automatically leads to a dismissal of the action, whatever view of the vessel's immunity the Court would have itself taken. *Ex parte Peru*, 318 U. S. at 588–590; *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 34–36. Even treaties from which private rights flow will normally not be interpreted contrary to a definite position taken by the executive vis à vis a foreign country, especially where judicial intervention might well cause difficulties in the larger sphere of foreign rela-

tions. *Foster* v. *Neilson*, 2 Pet. 253, 307–309; *Williams* v. *Suffolk Ins. Co.*, 13 Pet. 415; *United States* v. *Reynes*, 9 How. 127, 153–155; *Charlton* v. *Kelly*, 229 U. S. 447, 468, 474–476; *Sullivan* v. *Kidd*, 254 U. S. 433, 442; *Factor* v. *Laubenheimer*, 290 U. S. 276, 295; cf. Jaffe, *Judicial Aspect of Foreign Relations* (1933), 71–78.

This general attitude should apply to this case. Prior to full independence, the Philippine Government was in certain ways treated as a foreign government. For example, in 1937 the State Department determined that:

> Philippine Government officials are considered to be foreign government officials for visa purposes in view of [the] language of [the] Philippine Independence Act. [Hackworth, *Digest of International Law* (1940), vol. I, p. 502.]

The decision of the United States to preserve the national integrity of the Philippine Army during the war was a political decision, motivated no doubt by the desire both to improve the fighting morale of those troops and to demonstrate to other peoples that the United States was keeping faith in its promise of independence.

The decision to channel our assistance to the Philippine Army through the Philippine Government, and not directly to individual Filipinos, was again a decision relating to the conduct of our foreign affairs. Full independence for the Philippines had long been a policy of the United States, a policy of importance not only to our two countries but to countries all over the

world that were watching this experiment in self-government. The success of the experiment was essential. In the few short years before complete independence, the United States sought to help the Commonwealth Government acquire the experience that only responsibility can give. It was not by accident that under the financial arrangements between the two governments the Commonwealth Government continued during the war to have primary responsibility for procurement by the Philippine Army.[19a] During this same period the autonomy of the Philippine Government was recognized in other ways such as its participation as a signatory in the Declaration by United Nations of January 1, 1942 (the Philippine Government signed it on June 14, 1942) and in the United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire of July 1 to 22, 1944. See *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652, 676.

The Philippine Islands became fully independent on July 4, 1946. In the conduct of its relations with the Republic of the Philippines the United States continued as before to have the Army of the United States screen military and guerrilla claims against the Philippine Army and approve payment of those that had merit from funds advanced to the Philippine Government.

[19a] "When we call the Philippine Army into the service of the armed forces of the United States, we do not want to disrupt their organization. We want to continue it. We want their finance officers, their quartermasters, and every Philippine agency involved to carry out the same functions that they carry out now. Otherwise, the training would be detrimental rather than helpful." Testimony before Congress, October 6, 1941, App. E, *infra*, p. 88 *et seq.*

Two years after Philippine independence, the United States advanced to the Philippine Government an additional 93,778,000 pesos ($46,889,000) with which to meet guerrilla claims and other expenses of the Philippine Army. Of this amount, 42,000,000 pesos, together with amounts previously advanced, was considered adequate to cover claims already approved and the balance was to be available to pay additional amounts which might be due on reconsideration or review. (Treaties and other International Acts Series 2151, p. 3, App. D, *infra,* p. 92) There was a further agreement on July 11, 1949, extending the period in which these funds should be available. (App. D, *infra,* p. 96.)

The United States advanced these funds to the wholly independent government of the Philippines in the conduct of its military and foreign affairs and in further fulfillment of a moral obligation to help that government finance the legitimate claims arising from the operations of the Philippine Army during the war. It would appear that in advancing these funds there was at least an implicit determination by the Executive Branch that individual claims for guerrilla procurement should be addressed to the Philippine Government rather than the United States.

In 1950 the Philippine Government was in financial straits and asked the United States if, rather than returning the undisbursed balance of the funds advanced to it for the Philippine Army, it could borrow those funds for the general purposes of the government. See *USAFFE Veterans Association, Inc.* v. *Treasurer of the Philippines,* Civil No. 24277, Court

of First Instance of Manila, Branch VII, January 5, 1956.[20] The United States agreed that the repayment of the funds which had not been required to meet approved claims could be returned in installments over a period of ten years. Snyder-Romulo Agreement of November 6, 1950, App. D, *infra*, p. 89.

Payments are not now being made as provided in the Snyder-Romulo Agreement. The Philippine Government has raised with the United States on the diplomatic level a series of additional claims relating to the activities of the Philippine Army during the war and the obligation of the United States toward it. These claims fall into over a dozen categories. Among them are claims regarding quarters allowances, guerrilla currency, and the pay scale for all enlisted men in the Philippine Army. These claims which the State Department has received are currently under consideration.

These considerations are called to the Court's attention to suggest that particular weight should be given to the administrative construction that the United States did not authorize members of the Philippine Army to contract directly on behalf of the United States, and to indicate the extent of the political and diplomatic area on which this case directly touches.

There are also other reasons for suggesting that any ambiguity in the arrangements between the United States and the Philippine Army should be resolved against implying authority in irregular soldiers of

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[20] This was an unsuccessful suit by a veterans organization to enjoin the Philippine Government from returning the undisbursed balance of funds advanced by the United States.

the Philippine Army to create direct obligations upon the United States. Whether the soldiers of a separate military force have authority to obligate the United States should depend upon whether the United States intended to grant and did grant that authority, not, for example, on whether an order stated that a particular foreign unit was to fight "with" the United States armed forces or "as a part of" those forces. During World War II, in the Korean conflict, and under the North Altantic Treaty foreign units have been placed under the command of American officers. American troops have similarly been placed under the command of officers of other governments. Which government is in the first instance responsible for requisitioning by those units and what aid will be provided by other governments should be worked out by those creating the arrangements. Where such a pattern has been worked out and administratively followed for ten years by both governments, a court should, we submit, be cautious in imposing a different liability.

Petitioner's claim against the Philippine Army received full administrative consideration and was found to be without merit (R. 3, 11, 12). If petitioner has a claim it is against the Philippine Government. If he wishes to press that claim, he may do so. If the Philippine Government wishes to honor that claim it, too, may do so. The United States has already given generously both in time and money toward assisting the Philippine Government meet all those claims relating to the expenses of the Philippine Army that appeared to have merit. As with other

foreign military and economic assistance, this has been handled at the intergovernmental level. Any decision to do more should be made at the same level and should take into account related claims now being considered between the two governments.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be sustained.

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Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
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OCTOBER 1956.

APPENDIX A

Relevant Federal Statutes

Sections 1a and 1b of Title 10 U. S. C., (64 Stat. 263, 268, as amended, 66 Stat. 508) provide in part:

> 1a. *Definitions.* The terms "Army of the United States" and "Army" are synonymous and mean the Army or Armies referred to in the Constitution of the United States, less that part established by law as the Air Force. The Army includes the components and persons prescribed in section 1b of this title.
>
> 1b. *Organization of the Army.* The Army includes the Regular Army, the National Guard of the United States, and the Army Reserve; all persons appointed, enlisted, or inducted in the above-named components; all persons appointed or enlisted as Reserves of the Army, including persons transferred to such status under any provision of law; all persons appointed, enlisted, or inducted in the Army without specification of component; and all persons serving in the Army under call or conscription under any provision of law, including members of the National Guard of the several States, Territories, and the District of Columbia when in the service of the United States pursuant to call as provided by law.

Sections 4b, 4c, 81a and 81b of 32 U. S. C. (48 Stat. 157, 47 Stat. 158, 35 Stat. 400, as amended) provide:

> § 4b. *National Guard and National Guard of the United States Defined.*
>
> In this title, unless the context or subject matter otherwise requires—

(a) "National Guard" or "National Guard of the several States, Territories, and the District of Columbia" means that portion of the Organized Militia of the several States, Territories, and the District of Columbia, active and inactive, federally recognized as provided in this Act and organized, armed, and equipped in whole or in part at Federal expense and officered and trained under paragraph 16, section 8, article I of the Constitution.

* * * * *

§ 4c. *Territory Defined.*

The word Territory as used in this title and in all laws relating to the land militia and National Guard shall include and apply to Hawaii, Alaska, Puerto Rico, and the Canal Zone, and the militia of the Canal Zone shall be organized under such rules and regulations, not in conflict with the provisions of this title, as the President may prescribe.

* * * * *

§ 81a. *Authority to Call Forth Militia.*

Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable, with the regular forces at his command to execute the laws of the Union, it shall be lawful for the President to call forth such number of the militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose through the governor of the respective State or Territory, or through the commanding general of the Militia of the District of Columbia, from which State, Territory, or District such troops may be called,

to such officers of the militia as he may think proper.

§ 81b. *Calling Forth Militia; Period of Service; Apportionment.*

Whenever the President calls forth the organized militia (including the National Guard) of any State, Territory, or the District of Columbia, to be employed in the service of the United States, he may specify in his call the period for which such service is required, and the militia so called shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by the President: *Provided,* That no commissioned officer or enlisted man shall be held to service beyond the term of his existing commission or enlistment, except as provided in section 81 of this title. When the militia of more than one State is called into the actual service of the United States by the President he may, in his discretion, apportion them among such States or Territories or to the District of Columbia according to representative population.

* * * * *

Section 84 of 32 U. S. C. (1940 Ed.) provided:

§ 84. *Drafting Philippine Militia Into Federal Service.*

The militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided,* That the pay and allowances of officers and men of the Philip-

pine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this section when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts. (Jan. 26, 1918, ch. 11, 40 Stat. 432.)

APPENDIX B

EXECUTIVE ORDERS, REGULATIONS, REPORTS AND RELATED MATERIALS

Executive Order No. 9011 (7 F. R. 145) provides:

PRESCRIBING REGULATIONS GOVERNING THE MANNER OF EXPENDING AND ACCOUNTING FOR FUNDS APPROPRIATED FOR THE ARMY OF THE PHILIPPINES

By virtue of and pursuant to the authority vested in me by the act of December 17, 1941, Public Law 353, 77th Congress, I hereby prescribe the following regulations governing the manner of expending and accounting for funds appropriated for the Army of the Philippines:

DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE UNITED STATES

1. (a) Necessary expenditures, except as provided for in Paragraph 1 (b), for the purposes authorized by the act of December 17, 1941, may be made by disbursing officers of the Army of the United States notwithstanding any restrictive provision of law, but will be accounted for in accordance with present procedures governing the accounting for Government funds.

(b) Advances or reimbursements made to the Government of the Commonwealth of the Philippines by disbursing officers of the Army of the United States, as authorized by the Commanding General, United States Army Forces in the Far East, for necessary expenses authorized by the act of December 17, 1941, will be accounted for on vouchers evidencing the amounts advanced to or paid as reimbursement to the Government of the Commonwealth of the

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Philippines, but such vouchers need not be supported by vouchers paid by disbursing officers of the Army of the Philippines.

DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE PHILIPPINES

2. (a) Necessary expenditures from funds in the Philippine Treasury for the purposes authorized by the act of December 17, 1941, will be made by disbursing officers of the Army of the Philippines on the approval or authority of the Commanding General, United States Army Forces in the Far East, and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Philippine Government, and such expenditures will be accounted for in accordance with procedures established by Philippine Commonwealth laws and regulations.

(b) Accounts of disbursing officers of the Army of the Philippines after audit by the Auditor, Army of the Philippines and administrative examination by the Agency designated by the Commanding General, United States Army Forces in the Far East, to determine reimbursement due the Government of the Commonwealth of the Philippines, will be submitted to the Auditor General of the Philippine Commonwealth Government for preservation and safe keeping in accordance with provisions of Philippine law.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 3, 1942.*

Section 21 of the War Department Quartermaster Field Manual (FM 10–5) provides:

IN THEATER OF OPERATIONS.—Supplies are obtained in the theater of operations from two sources: by exploitation of the resources of the theater of operations, and by forwarding from

the zone of the interior. It is fundamental that all supplies and facilities available in the theater of operations should be utilized to the utmost. This is especially true of subsistence and forage. The fullest utilization of local supplies becomes increasingly important when the theater of operations lies in a country deficient in railroads and waterways. When the theater of operations is in hostile territory, supplies are obtained by purchase or requisition. Requisitions are either direct (foraging) or by systematic collection into depots. Requisitions are resorted to only when authorized in orders of the commander of the theater of operations and are enforced by detachments commanded by commissioned officers. Property obtained by requisition is either paid for or restored with suitable indemnity. However, better results are usually obtained when cash payment is made for the supplies taken. If the supplies are not paid for upon delivery, receipts are given; these receipts are redeemed at the earliest possible date. Under certain conditions, with a view to taking full advantage of available resources in the theater of operations, it may be advisable to create a purchasing agency to supervise the purchase or requisition of supplies. This agency should furnish information as to the character of supplies which can be advantageously obtained in the theater of operations and other pertinent information as may be necessary to permit intelligent determination as to the expediency of purchase or requisition. A well-organized system of purchase and requisition is of great value, but exclusive reliance cannot be placed on local procurement even in the most productive countries. Recourse must invariably be had to shipments from the zone of the interior.

The order of the Commanding General (USAFP) recognizing, *inter alia*, the 7th Military District of

Negros (the guerrilla organization here involved) states:

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

CM/jb
APO 500
AG 370.64 (23 Aug 45) PA 23 August 1945

Subject: Recognition of Guerilla Units.
To: Commanding General, United States Army Forces, Western Pacific, APO 707
Chief of Staff, Philippine Army, APO 501

1. Guerrilla forces as indicated below were recognized by the Commander-in-Chief, SWPA, on dates shown:

Commander	Area	Date
Col Wendell W. Fertig	10th Mil Dist	13 Feb 1943
Col Macario Peralta	6th Mil Dist	13 Feb 1943
Col Ruperto K. Kangleon	Leyte Command	21 Oct 1943
Col Alejandro Suarez	Sulu Command	11 Feb 1944
Lt Col Salvador Abcede	7th Mil Dist	8 Jul 1943
Lt Col James Cushing	Cebu Command	12 Feb 1944
Lt Col Charles W. Smith	Samar Command	4 Oct 1944
Maj Ismael P. Ingeniero	Bohol Command	21 Oct 1943
Maj Jose M. Ruffy	Mindoro	15 Dec 1944
Maj Pablo Muyco	Palawan	28 Feb 1945
Capt Manuel Donato	Masbate	3 Apr 1945
Capt Sofronio Untalan	Marinduque	15 Dec 1944

2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of units under commanders listed above is that of members of the Philippine Army.

By command of General MACARTHUR:

D. W. DOOLEY,
Capt, AGD,
Asst, AG.

A true copy:

(S) Lester W. Pierce, Jr.,
LESTER W. PIERCE, Jr.,
1st Lt., CAC,
Chief, Records Section.

The following letter was addressed to the Chairman of the House Judiciary Committee by the Secretary of the Army in response to a request for comment on proposed legislation, the original of which is in the files of the Committee:

MAY 12, 1954.

Honorable CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter inclosing a copy of H. R. 6541, 83d Congress, a bill "To extend the time for filing claims on behalf of certain claimants, and for other purposes," and requesting a report on the merits of the bill.

This bill provides as follows:

"That, notwithstanding any statute of limitations or lapse of time, suits may be instituted within one year after the enactment of this Act in the United States Court of Claims in accordance with the provisions of section 1491, title 28, United States Code, by all persons who claim compensation for property, goods, and services, and reimbursement for moneys, credit, and securities advanced to military forces serving on the side of the United States in the Philippine Islands during the period from December 7, 1941, to September 2, 1945: *Provided,* That any such claim shall be barred forever unless suit thereon is instituted within one year from the date of the enactment of this Act: *Provided further,* That nothing in this Act shall be construed to create any liability against the United States not existing prior to the enactment of this Act."

Section 1491, title 28, United States Code, provides, in pertinent part, as follows:

"The United States Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

"(1) Founded upon the Constitution; or

"(2) Founded upon any Act of Congress; or

"(3) Founded upon any regulation of an executive department; or

"(4) Founded upon any express or implied contract with the United States; or

"(5) For liquidated or unliquidated damages in cases not sounding in tort.

* * * * *

Subsection (a), section 2401, title 28, United States Code, provides as follows:

"(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases."

The purpose of the subject bill is to waive the above-quoted statute of limitations in favor of a certain group of persons who assert claims against the United States, allegedly arising in the Philippine Islands during the period from December 7, 1941, to September 2, 1945.

Inasmuch as the courts of the United States were deemed to have been inaccessible to inhabitants of the Philippine Islands from the date of the Japanese attack (December 8, 1941, Manila time), until the date of formal surrender by the Japanese (September 2, 1945, Manila time), it was held that the operation of the statute of limitations was suspended during such time with resepect to these inhabitants. Therefore, it was held that any such inhabitant could present to the Court of Claims a claim against the United States arising during the period of inaccessibility at any time within six years after September 2, 1945, and that any such claim presented after September 2, 1951, would be untimely and barred by said statute of limitations. *Marcos* v. *United States,* 102 F. Supp. 547 (Ct. Cl. 1952), rehearing denied

106 F. Supp. 172 (Ct. Cl. 1952); *Tan* v. *United States,* 102 F. Supp. 552 (Ct. Cl. 1952), certiorari denied 344 U. S. 895. It should be noted that the Court allowed claims to be filed within the full six-year period following September 2, 1945, instead of the usual three-year period provided in section 2401 (a) for persons beyond the seas or under legal disabilities at the time their claims accrued.

In order to gain a full appreciation of the difficulties which would be presented by the enactment of the subject bill, it seems desirable at this point to briefly examine the history of claims falling within the purview of the bill.

The Act of March 24, 1934 (48 Stat. 456), authorized the creation of the Commonwealth of the Philippine Islands and the formulation of a constitution for its government, subject to certain restrictions and limitations. Subsection 2 (a) thereof provided, in part, as follows:

"The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

"* * * * * *

"(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government." (48 Stat. 456, 457.)

The Constitution of the Commonwealth of the Philippines was adopted on February 8, 1935, and the foregoing provision was incorporated into the Ordinance appended to the Constitution. The Philippine Army was cre-

ated by Philippine Commonwealth Act Number 1, approved December 21, 1935, commonly known as "The National Defense Act," which, together with later Commonwealth acts, provided appropriations from the Treasury of the Commonwealth of the Philippines for the support of the Philippine Army.

With threat of war imminent, there was created, on July 26, 1941, a new command in the Far East, known as the United States Army Forces in the Far East (USAFFE), and Lieutenant General Douglas MacArthur was appointed the Supreme Commander. On the same date, the President of the United States, as Commander-in-Chief of the Army and Navy of the United States, and in pursuance of the foregoing authority, issued a Military Order (6 Fed. Reg. 3825), which read, in pertinent part, as follows:

"* * * I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines: *Provided,* that all naval components thereof shall be placed under the command of the Commandant of the Sixteenth Naval District, United States Navy.

"This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War."

General MacArthur immediately initiated a program of mobilization, and on August 5, 1941, he began to order various units of the Philip-

pine Army "into the service of the armed forces of the United States in the Philippines." However, when war broke out on December 8, 1941 (Manila time), mobilization was as yet incomplete. On December 18, 1941, all units of the Philippine Army not theretofore called were ordered to report for service immediately. The total peak strength of all Philippine Army Forces during this period has been estimated to be approximately 86,000.

On May 7, 1942, Lieutenant General Jonathan M. Wainwright tendered "to the senior Japanese officer on Corregidor, the formal surrender of all American and Filipino Army troops in the Philippines." Surrender of the Visayan-Mindanao Force of Major General W. F. Sharp, and the forces on Negros under Colonel Roger Hilsman, followed on May 11, 1942. It has been estimated that, upon the surrender, 55,000 members of the Philippine Army became prisoners of war. While the surrender instructions directed all American and Filipino Army troops to cease resistance, a considerable number of officers and enlisted men, both American and Filipino, refused to comply and retreated to the hills. Many others escaped after the surrender. These men were the nucleus of what was to become the resistance movement in the Philippine Islands.

Independent guerrilla groups, composed of both civilian and military personnel, began to form throughout the Islands. Initially, these groups were small and, due to the terrain and variable Japanese occupation conditions, remained largely independent until communications were improved and directives were received from General MacArthur's Headquarters in Australia. Under directives from General Headquarters, Southwest Pacific Area (SWPA), guerrilla groups in the Visayas and on Mindanao were slowly unified. Groups on Luzon could not be reached and they grew largely on

their own until late 1944, when the large body of guerrillas active there became known for the first time. Unification, when it was effected, was often accompanied by conflict and prejudice. Animosity between many groups grew, and they vied with each other for recognition, power, or glory. Many of the populace willingly contributed to the support of their local guerrilla groups. On the other hand, some groups preyed upon the people and took the supplies they needed, either by misrepresentation or by force. In fact, many self-styled "guerrilla" bands were nothing but roving bandits.

American liberation forces landed on Philippine soil at Leyte, on October 20, 1944, and the large-scale return of Philippine Army personnel to American Army control began a few days later. On October 28, 1944, the President of the Commonwealth of the Philippines issued Executive Order Number 21, in which he declared that—

"All persons, of any nationality of citizenship, who are actively serving in recognized military forces in the Philippines, are hereby considered to be on active service in the Philippine Army.

"* * * * * *

"A recognized military force, as used herein, is defined as a force under a commander who has been appointed, designated or recognized by the Commander-in-Chief Southwest Pacific Area."

As American liberation forces progressed through the Islands, guerrilla groups were attached for the purpose of engaging in combat activities. Upon proof of their usefulness, the Commanding General of the United States Army to which they were attached officially recognized each of these groups as a "military force" within the meaning of Executive Order

Number 21. Many guerrilla groups not attached to U. S. Army Forces during the liberation, but which met certain requirements of service in the resistance movement during the Japanese occupation, were later recognized as military forces by the Commander-in-Chief, SWPA, and the Commanding General, United States Army Forces Western Pacific (AFWESPAC). In recognition of the services rendered by these guerrilla units in the resistance movement, recognition dates were in many cases made retroactive, and in some cases as far back as 1942.

Countless claims for guerrilla recognition were received. Approximately one out of every eight persons on the island of Luzon, man, woman, and child, submitted a claim for guerrilla recognition, and out of approximately one million individuals claiming guerrilla status on Luzon, less than two hundred thousand were found to be bona fide, full-time guerrillas.

Almost immediately, claims were asserted against the United States for pay and allowances and for compensation for services and supplies. These claims may be roughly divided into three categories; namely, (1) those concerned with members of the United States Armed Forces (including the Philippine Scouts), (2) those dealing with members of the Philippine Army, and (3) those dealing with non-military guerrillas.

The Department of the Army does not question the liability of the United States with respect to claims falling within the first category, where such claims are substantiated.

It has been administratively determined that the United States is not legally responsible for the payment of claims falling within the second and third categories. This view was not accepted by the United States Court of Claims in the case of *Victorio* v. *United States* (Ct. Cl. 1952, 106 F. Supp. 182); however, this decision

is not final and is subject to review by the United States Supreme Court. The Department of the Army remains of the view that there exists no *legal* obligation on the part of the United States. However, inasmuch as this is a question for future determination by the courts, no extended discussion of this point will be here made.

With the mounting tension in the Far East early in 1941, it became apparent that the organization and mobilization of the Army of the Philippines was necessary to the defense of the Islands, but that the Government of the Commonwealth of the Philippines was incapable of providing the means therefor without financial aid from the United States. In November of 1941, the then Chief of Staff, United States Army, General George C. Marshall, testifying in connection with a request for appropriations, stated:

"* * * This Army, being an Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the Armed Forces of the United States. Because of this fact and the fact that the Congress had not appropriated funds for the purpose, $10,000,000 was borrowed from the emergency fund of the President in order to initiate the mobilization and to provide the necessary maintenance for this force. * * *" (Hearings before the Subcommittee of the House Committee on Appropriations on the Third Supplemental National Defense Appropriation Bill for 1942, 77th Cong., 1st Sess., p. 47 (1941).)

The Congress of the United States, during the period from December 17, 1941, through July 3, 1945, appropriated the total sum of $297,313,300.00 for—

"* * * all expenses necessary for the mobilization, operation, and maintenance of the

Army of the Philippines, including expenses connected with calling into the service of the armed forces of the United States the organized military forces of the Government of the Commonwealth of the Philippines, and expenditures incident to pay, allowances, operation, maintenance, and other activities of units and personnel of said organized military forces * * * [such sum] shall be available for payment to the Government of the Commonwealth of the Philippines upon its written request, either in advance of or in reimbursement for all or any part of the estimated or actual cost, as authorized by the Commanding General, United States Army Forces in the Far East, of necessary expenses for the purposes aforesaid * * *." (Act of July 3, 1945, 59 Stat. 401; See also: Act of December 17, 1941, 55 Stat. 813; Act of July 2, 1942, 56 Stat. 628; Act of July 1, 1943, 57 Stat. 365; and Act of June 28, 1944, 58 Stat. 591.)

The Act of February 18, 1946 (60 Stat. 14), transferred to this appropriation ("Army of the Philippines") an additional sum of $200,000,000.00 with the following provisos:

"*Provided,* That service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof, except benefits under (1) the National Service Life Insurance Act of 1940, as amended, under contracts heretofore

entered into, and (2) laws administered by the Veterans' Administration providing for the payment of pensions on account of service-connected disability or death: *Provided further,* That such pensions shall be paid at the rate of one Philippine peso for each dollar authorized to be paid under the laws providing for such pensions: *Provided further,* That any payments heretofore made under any such law to or with respect to any member of the military forces of the Government of the Commonwealth of the Philippines who served in the service of the armed forces of the United States shall not be deemed to be invalid by reason of the circumstances that his service was not service in the military or naval forces of the United States or any component thereof within the meaning of such law."

Upon the liberation of the Islands, it was realized that the Government of the Commonwealth of the Philippines could not meet whatever obligations were imposed upon it by virtue of the issuance of Executive Order No. 21 by the President of the Commonwealth, *supra.* Consequently, and in furtherance of the expressed desire on the part of the United States to help bolster the devastated economy of the Islands, General MacArthur, pursuant to the discretion vested in him by the provisions of the Appropriation, Army of the Philippines, considered it advisable and proper that those inhabitants of the Islands who made substantial contributions to the fight against the Japanese should be compensated therefor from this appropriation as expeditiously as possible. Accordingly, facilities were established early in 1945 for the processing of claims asserted by guerillas for pay and allowances and by others for supplies and services furnished to the guerrillas. The claims were processed and investigated in the Islands by the U. S. Army, and where found meritorious, they were certified to

the Philippine Army for payment. Such payments were made out of funds advanced to the Commonwealth of the Philippines (and later the Republic of the Philippines) for that purpose in accordance with the provisions of the appropriation act. During the fiscal years 1945 through 1949, the sum of approximately $285,000,000.00 was advanced to the Philippine Government, and the major portion of this sum was presumably expended by the Philippine Government in payment of claims certified to it.

In April, 1945, a claims office was established in the Manila area by the U. S. Army, and shortly thereafter, branch offices were established throughout the Islands. In August of 1947 notice was given that all branch offices would be closed on October 31, 1947, and that all further claims activities would be conducted at the Manila office. In view of the fact that the Appropriation, Army of the Philippines, would lapse and no longer be available for the payment of claims after June 30, 1948, a deadline of March 31, 1948, was established for the receipt of procurement claims (earlier deadlines had been established for other types of claims). This deadline was well publicized. Just prior to the lapse of the appropriation, however, an agreement was reached whereby the sum of approximately $47,000,000.00 was advanced to the Philippine Government for the payment of outstanding claims and claims that were to be reconsidered during the fiscal year 1949. Inasmuch as these additional funds were available for the payment of claims, it was decided that, on October 13, 1948, the acceptance of claims be resumed until July 1, 1949.

It is estimated that more than 1,200,000 claims for guerrilla recognition and the resultant pay and allowances, involving many hundreds of millions of dollars, were presented and processed. Of this number, approximately

267,000 were found to be bona fide, full-time guerrillas.

It is estimated that a total of more than 470,000 claims for services and supplies, involving more than $600,000,000.00 were presented and processed. Approximately 280,000 of these, in the total amount of approximately $176,000,000.00, were filed in the three-year period from 1945 through February, 1948. Approximately 150,000 claims, involving more than $260,000,000.00, were filed in the month of March, 1948, alone (March 31, 1948, was the deadline for receipt of claims). Approximately 40,000 more claims, in the total amount of approximately $172,000,000.00, were filed in the period from October 13, 1948, through June 30, 1949. Thousands of claims were given individual reconsideration at the request of dissatisfied claimants, and during the last months of the fiscal year 1949, approximately 375,000 claims were individually reviewed for errors, and where errors were found, they were corrected.

The tendency of claimants to submit grossly exaggerated claims, which became readily apparent during the frenzied filing of claims to meet the deadline of March 31, 1948, was shown to have been greatly intensified in the filing of new claims after October, 1948. There is evidence of the operation of claims racketeers in the Islands. The extent of their activities can only be guessed, but it can be stated that the most difficult problem confronting claims personnel of the United States was the detection of false and exaggerated claims. The number and amount of claims that were submitted without any foundation in fact were fantastic, and it required highly trained and experienced personnel to prevent such claims from being paid. Forged documents were commonplace, and in many cases unscrupulous ex-guerrillas executed false receipts and other

documents. It was only through the maintenance of extensive cross-indices, and the experience of claims personnel, that it was possible to detect a major portion of false claims. There was not at that time, and there is not today, any suitable provision in the law of the Philippines for the prosecution of individuals who knowingly submit, or assist in the submission, of these false claims.

It would seem that inhabitants of the Philippine Islands have been allowed an ample period of time within which to present their claims. They could have filed their claims for administrative consideration from April, 1945, to July 1, 1949, a period of over four years. As hereinbefore pointed out, any claimant who did not file such a claim, or who was dissatisfied with the administrative decision in his case, had the opportunity to present his claim to the United States Court of Claims any time before September 2, 1951. It is well to note at this point that the Court of Claims will accept a claim presented by mail.

It has been contended that inhabitants of the Islands have not been made aware of their legal rights against the United States; that they were misled by the first decision in the case of *Victorio* v. *United States* (Ct. Cl. 1950, 91 F. Supp. 748), in which the Court of Claims held that the United States was not liable for guerrilla procurement claims; that it was not until after the statute of limitations had run that the Court held, on rehearing (Ct. Cl. 1952, 106 F. Supp. 182), that the United States was liable for procurements made by certain guerrilla and Philippine Army units; and that those claimants who were not fortunate enough to have attorneys, or to have attorneys who would file their claims despite the adverse ruling in the first *Victorio* decision, were deprived of

their right to file a claim with the Court by reason of the running of the statute of limitations.

In this connection, it is interesting to note that attorneys have been active in the Islands in this type of case for years; that the "Claims Committee, Liberated Military Personnel (Japan), Washington 4, D. C.," has been active in the Islands, and many claims were forwarded to it through the Luna Law Offices in Manila (for further information on this "Committee" and its other activities, see: Extension of Remarks of Honorable James E. Van Zandt (93 Cong. Rec. App. A1989); Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 873, H. R. 1823, H. R. 1000, and H. R. 2823, 80th Cong., 1st Sess., p. 365 (1947)); and that the Washington, D. C., attorneys for the Committee (well publicized in the Committee's brochures) were also the attorneys for the plaintiff in the second *Victorio* decision. It appears that the inhabitants of the Islands have been made well aware of their alleged rights against the United States by Filipino and American attorneys, and others.

The enactment of the subject bill will allow the filing with the Court of Claims of hundreds of thousands of disapproved claims, not to mention the alleged claims—of every type—of thousands of others who did not file claims with the Army. In view of the past history of extensive solicitation of claims in the Islands, it can be anticipated that the Court would be deluged with these claims.

The Department of the Army is strongly of the opinion that the enactment of this legislation would open a Pandora's box. These claims are, by their very nature, difficult of legal defense. Records have been retired and personnel are scattered. Many witnesses have

died or disappeared. Many areas in the Islands where events are alleged to have occurred are inaccessible to Army investigators because of the civil strife now in progress.

A statute of limitation is not merely a legal technicality, it is a rule designed to promote justice. It has been enacted for the purpose of putting an end to legal controversy, whether between private individuals or a private individual and the Government. The theory is that a time comes when records are not available and memories have faded, and it is no longer possible for the courts of law to reach substantial justice concerning the alleged facts in issue. If the subject bill is enacted, it will allow the re-opening of claims which are anywhere from 9 to 13 years old, and it is likely that at the time of actual trial some of these claims will be over 16 years old. As hereinbefore pointed out, the Court of Claims has allowed claims to to be filed within the six-year period following September 2, 1945, instead of the usual three-year period provided for persons beyond the seas or under legal disabilities. It is believed that a firm insistence upon the statute of limitations in this type of case will promote substantial justice, and that it will be in the best interests of the United States and its relations with the Republic of the Philippines.

The Department of the Army, in view of the foregoing, strongly recommends that the subject bill be not favorably considered by the Congress. The Department would appreciate the opportunity to have its representatives, well-experienced in the problems presented, appear before your Committee and enlarge upon the views herein contained.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

(Signed) Robert T. Stevens,
ROBERT T. STEVENS,
Secretary of the Army.

Statement of General George C. Marshall, United States Army Chief of Staff, on Hearings before the House Committee on Appropriations, on the Third Supplemental National Defense Appropriation Act of 1942, 77th Cong., November 17, 1941, (p. 47: Part II)

MOBILIZATION AND OPERATION OF THE PHILIPPINE ARMY

The sitation in the Far East attained such threatening proportions in the late summer that it was deemed essential to take steps to increase the defensive capabilities of the Philippine Department. In addition to certain steps, of which I shall speak off the record, it was decided to activate the Philippine Commonwealth Army. This Army, being an [redacted] Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States. Because of this fact and the fact that the Congress had not appropriated funds for the purpose, $10,000,000 was borrowed from the emergency fund of the President in order to initiate the mobilization and to provide the necessary maintenance for this force. Gen. Douglas MacArthur, former Chief of Staff of the Army, and recently military adviser to the Philippine Commonwealth Government, was recalled to active duty and appointed by the Commander in Chief to command all military forces in the Far East. The funds borrowed from the emergeny fund of the

President were made available to General MacArthur. He has informed the War Department that he has begun the mobilization and training of the Philippine Commonwealth Army. He further informs that the $10,000,000 made available to him will finance his requirements only through November.

The following extract is reprinted, without internal omissions, from the Sixth Annual Report of the United States High Commissioner to the Philippine Islands (H. Doc. 111, 78th Cong. 1st Sess. 1943) pp. 14–15:

II. MILITARY AND NAVAL ACTIVITIES AND CIVILIAN DEFENSE

MILITARY DEVELOPMENTS

As relations with Japan become increasingly tense, the tempo of military preparations in the Philippines was stepped up. Maj. Gen. George Grunert, in command of the Philippine Department, kept pressing Washington for additional personnel, ammunition, and equipment and pushing the work of preparing, strengthening, and reorganizing the defense of the islands. On July 26, 1941 (July 27, Manila date), President Roosevelt ordered the incorporation of the Philippine armed forces in the United States Army and appointed Gen. Douglas MacArthur as commander of the United States Army forces in the Far East. Shortly after General MacArthur received this appointment his headquarters issued the following statement:

"The general plan for the integration of all the armed forces in the Philippines has been formulated by General MacArthur. It envisions a progressive incorporation of the reserve divisions of the Philippine Army into the service of the United States. It comprehends eventually all elements of the Philippine Army, but until an actual outbreak of hostili-

ties will not include these echelons which are engaged in the normal yearly training activities. This will enable the Philippine Army to continue its uniform development in accordance with the national defense program of the Commonwealth and at the same time muster for prompt American Army training and service the other components of the Commonwealth's forces. The constabulary will not be taken over with the exception of certain selected elements.

"The plan envisions an immediate construction program at strategic localities to house the thousands of reservists involved as well as the intensive development of new air fields for the rapidly expanding air forces. All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own ration, and their own code of military law. Their training, however, will be under the immediate direction of the officers of the American Army. On muster into the American service they will be paid and supplied from American sources. The class of trainees whose induction was suspended in July is expected to be called in January, from which time the normal course of Philippine Army training will continue, barring contingencies.

"The plan is a most comprehensive and complete one and will go into effect immediately. Its details involve military information which cannot be made public and the press has been requested not to reveal numbers, localities, and other data involving military secrecy. However, information on general progress will be reported together with all details which are not regarded as confidential.

"The program has been heartily endorsed by President Quezon and is expected to effectuate in a most comprehensive manner the purposes underlying President Roosevelt's proclamation."

The following memorandum, approved by General George C. Marshall, CS-USA, was the basis on which Secretary of War Stimson recommended that the President call the Philippine forces to the defense of the Islands on July 26, 1941:

WAR DEPARTMENT

WAR DEPARTMENT GENERAL STAFF

War Plans Division

WASHINGTON, *July 17, 1941.*

Memorandum for the Chief of Staff:

Subject: Emergency Mobilization and Training of the Philippine Army.

I. *Discussion.*

1. In April 1941, the Commanding General, Philippine Department, recommended that certain elements of the Philippine Army be called and ordered into the service of the armed forces of the United States. Funds were not available for the purpose, at that time. However, an Executive Order was drafted, and approved by the President, so that action could be taken promptly in an emergency. A revision of the original draft is deemed advisable so that command authority may be vested in a General Officer, designated by the Secretary of War, rather than restricted to the Commanding General, Philippine Department (Tab A).

2. Legislation, for submission to Congress, authorizing the appropriation of certain sugar excise tax and currency devaluation funds, for the purpose of improving the defenses of the Philippine Commonwealth, was dispatched to the Chief of Staff on July 12. The President has approved this procedure. Approximately $52,000,000 is involved, of which $31,000,000 is set up for the mobilization and training of the Philippine Army. Various items making up the total of funds to be expended for this purpose are listed in Tab B.

3. General Grunert, in commenting on his plans, states that the mobilization process and machinery will remain in the hands of the Philippine Army; that approximately 425 Reserve officers of the United States Army will be required to assist in mobilization and training activities.

4. In a personal letter to the Chief of Staff, dated July 7, 1941, General MacArthur concurs, in general, with the views of the Commanding General, Philippine Department. He states the importance of having the Philippine Army retain its complete identity and operation under its own laws and regulations. He feels that the War Department should make available to the Philippine Government the necessary number of qualified American officers as instructors.

5. Consideration has previously been given to placing General MacArthur in command of all Army Forces in the Far East. General MacArthur believes that the time is now opportune to create such a command, and that it will result in favorable psychological and morale reactions.

6. Until enactment of necessary enabling legislation and the appropriation of moneys from sugar excise and dollar devaluation funds, no specific funds are available to cover the cost of mobilization and training of the Philippine Army.

7. In view of the present situation in the Far East, and the inadequate forces available in the Philippine Islands for defense, War Plans Division believes that the Executive Order calling the Philippine Army into the service of the armed forces of the United States should be promulgated without delay. Funds to cover the cost of these measures, pending appropriation of sugar excise and dollar devaluation funds, should be secured from the President's Emergency Fund, subject to repayment.

8. The Commanding General, Philippine Department, points out that the pay and subsistence of the Philippine Army are less than rates of pay and emoluments of the Philippine Scouts. To conform to the recommendations of Generals Grunert and MacArthur, and to meet possible legal restrictions, any funds secured should be available to meet pertinent expenses of the Philippine Commonwealth.

II. *Action recommended.*

1. That the attached letter to the President, recommending that the Executive Order calling and ordering into the service of the armed forces of the United States, for the period of the emergency, all of the organized military forces of the Government of the Philippine Commonwealth, be promulgated, be signed and dispatched.

2. That the War Department Budget Officer be directed to request the Director of the Bureau of the Budget to make available from the President's Emergency Fund the sum of $10,000,000 for expenditure by the War Department and the Government of the Commonwealth of the Philippines, to cover the costs of mobilization and training of the Philippine Army for a period of approximately three months.

3. That training of the Philippine Army for an additional period of approximately six to nine months be financed from moneys appropriated from sugar excise and currency devaluation funds or from other funds appropriated for this specific purpose.

4. That the Assistant Chief of Staff, G–1, be directed to secure and order to the Philippine Department, for duty, approximately 425 Reserve officers of appropriate grades and branches, for the purpose of assisting in the mobilization and training of the Philippine Army.

5. That the Assistant Chief of Staff, G–1, be directed to take the necessary steps to have

General MacArthur called to active duty, in the grade of Major General. (See Tab C.)

6. That General MacArthur be assigned to duty as Commanding General, Army forces in the Far East, including the Philippine Department. (See Tab D.)

7. That, if approved, correspondence be returned to War Plans Division for further necessary action.

III. *Concurrences.*

A. C. of S., G–1 (MHH). Jul 18 1941.
A. C. of S., G–3 (HW). Jul 18 1941.

L. T. GEROW,
Brigadier General,
Acting Assistant Chief of Staff.

JUL 26 1941.

Approved:
By order of the Secretary of War:

G. C. MARSHALL,
Chief of Staff.

(S) R. N. Young,
By R. N. YOUNG,
Major GSC, Asst Sec. W. D. G. S.

APPENDIX C

PHILIPPINE COMMONWEALTH CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the Philippines:

* * * * *

ARTICLE II—DECLARATION OF PRINCIPLES

* * * * *

SEC. 2. The defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service.

* * * * *

ARTICLE VII—EXECUTIVE DEPARTMENT

* * * * *

SEC. 11. (2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

* * * * *

ORDINANCE APPENDED TO THE CONSTITUTION

* * * * *

SEC. 1. (12) The Philippines recognizes the right of the United States to expropriate prop-

erty for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

* * * * *

Philippine Commonwealth Act No. 1—an Act to provide for the National Defense of the Philippines, penalizing certain violations thereof, appropriating funds therefor, and for other purposes, provides in part:

* * * * *

TITLE II—MILITARY ORGANIZATION

ARTICLE I—COMPOSITION AND ORGANIZATION OF THE ARMY

* * * * *

SEC. 17. The Army of the Philippines shall consist of the Regular Force and the Reserve Force.

* * * * *

ARTICLE II—THE REGULAR FORCE

SEC. 19. The Regular Force shall consist of the Infantry, the Cavalry, the Field Artillery, the Coast Artillery Corps, the Air Corps, the Corps of Engineers, the Signal Corps, and the active elements of the Offshore Patrol; the General Staff Corps; the Services consisting of the Adjutant General's Service, the Judge Advocate Service, the Quartermaster Service, the Medical Service; the Ordnance Service, and the Chaplain Service, the professors and cadets of the Military Academy; of detached officers, of detached enlisted men, of unassigned recruits, of such other officers and enlisted men as may be provided for, and of the Constabulary. Officers and enlisted men permanently

assigned to the services shall be known as officers and enlisted men of the Staff; officers and enlisted men not permanently assigned to a service shall be known as officers and enlisted men of the line.

* * * * *

SEC. 22. The appointment, promotion, and discharge of officers in the Army shall be as follows:

(a) All commissioned officers in the Army shall be citizens of the Philippines * * *

(b) Officers shall be commissioned in the Army of the Philippines subject to such examinations for the determination of fitness and proficiency as the President may prescribe. All appointments and promotions shall be made by the President, but the appointments and promotions in the Army from the rank of colonel shall be made with the consent of the Commission on Appointments of the National Assembly.

(c) Except as hereinafter authorized, all appointments of regular officers shall be in the grade of third lieutenant, from among applicants who at the time of appointment shall be not less than twenty-one nor more than twenty-six years of age. Priority in filling vacancies in the grade of third lieutenant will be given: first, to graduates of the Military Academy of the Philippines or of the Military or Naval Academies of the United States; second, to graduates of senior military training units in schools and colleges; third, to enlisted men who at the time of appointment shall have served more than one year in the Army of the Philippines; and fourth, to others: * * *

* * * *And provided, also,* That during the five years following the approval of this Act, the President is authorized to fill vacancies in any commissioned grade in the Army of the Philippines by appointment of officers of the

Philippine Constabulary who are citizens of the Philippines and of such officers of the Philippine Scouts and of the Officers' Reserve Corps, U. S. Army, and of graduates of the United States Naval Academy, citizens of the Philippines, as have, prior to their appointment in the Army of the Philippines, legally and honorably severed their connection with the active elements of the Army of the United States, and of such others as may qualify through professional and military examination prescribed for the purpose.

* * * * *

(g) Until superseded by laws formulated by the National Assembly for specific application to the Army of the Philippines, all regulations, courts-martial procedure, and provisions of law now pertaining to the punishment, discharge, dismissal, resignation, administration, and retirement of officers and enlisted men of the Philippine Constabulary shall, as modified by provisions of this and other laws, apply to all officers and enlisted men on active duty in the Army.

* * * * *

SEC. 23. The General Staff Corps shall consist of the Chief of Staff, the Central General Staff, and the General Staff with troops.

(a) The Chief of Staff shall be directly subordinate to the President of the Philippines. He shall preside over the Central General Staff.

APPENDIX D

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 2151

Finance: Repayment of Funds Advanced to the National Defense Forces, Republic of the Philippines, by the United States Philippines-Ryukyus Command. Agreement between the United States of America and the Republic of the Philippines. Signed at Washington November 6, 1950. Entered into force November 6, 1950.

Department of State, Publication 4070 [Literal print]. United States Government Printing Office, Washington: 1951.

AGREEMENT

This Agreement, signed this date by and between the Government of the Republic of the Philippines, represented by the Honorable Carlos P. Romulo, Secretary of Foreign Affairs, and the Government of the United States, represented by the Honorable John W. Snyder, Secretary of the Treasury, is entered into for the purpose of arranging for the return to the Government of the United States of America of the residual total of the peso funds purchased for dollars and advanced to the National Defense Forces, Republic of the Philippines, by the United States Philippines-Ryukyus Command under agreements dated June 30, 1948, and July 11, 1949, between the Commanding General of the United States Philippines-Ryukyus Command and the Chief of Staff of

the National Defense Forces, Republic of the Philippines, copies of which are attached hereto and made a part hereof, for the purpose of permitting the Headquarters of the National Defense Forces on behalf of the United States Philippines-Ryukyus Command to pay certain specified claims which had on or before that date been approved by the United States Philippines-Ryukyus Command.

ARTICLE I

The Government of the Republic of the Philippines in recognition of its obligation to return to the United States the balance of the funds referred to above, now mutually agrees with the United States Government to the following method of accomplishing the return to the Government of the United States of the said balance:

1. In consideration of the agreement by the Government of the Republic of the Philippines to pay to the Government of the United States in dollars the balance of the aforesaid funds, the Government of the United States hereby releases the Government of the Republic of the Philippines from the obligation described in the aforesaid agreements of June 30, 1948, and July 11, 1949, to return immediately the total unexpended balance of the said peso funds.

2. The Government of the Republic of the Philippines agrees that the dollar amount payable hereunder, when it shall have been finally ascertained in accordance with Article II hereof, shall be computed at the rate of two pesos to one dollar.

3. The Government of the Republic of the Philippines further agrees to pay the dollar amount payable hereunder to the Secretary of the Treasury of the United States in ten annual installments, the first

nine payments to be in the amount of $3,500,000, and the final or residual payment to be in the amount determined by deducting the total of the previous principal payments from the total amount of dollars to be paid to the Secretary of the Treasury of the United States, the latter amount to be determined as provided in Article II hereof. It is further agreed that the first annual payment will be made on May 31, 1951.

4. The total amount of the dollar payment herein mutually agreed to shall bear interest at the rate of two and one-half percent per annum, payable on the unpaid principal balance thereof from time to time outstanding, and may be paid either annually or semiannually, at the option of the Government of the Republic of the Philippines, the first interest payment to be made on May 31, 1951, coincident with the first annual payment of principal. Interest shall be computed from the effective date of this agreement, and all interest shall be computed on the basis of the actual number of days, using a 365-day factor; provided, however, that pending final determination of the total principal amount to be paid to the Secretary of the Treasury of the United States in accordance with Article II hereof, interest shall be computed on the basis of a total amount payable of $35,000,000, to be appropriately adjusted by mutual agreement between the parties hereto upon final determination of such amount.

ARTICLE II

It is agreed by the parties hereto that the results of an audit currently being made by the United States Philippines-Ryukyus Command will be accepted by the Government of the Republic of the Philippines,

for the purpose of computing the dollar amount payable hereunder, as finally determinative of the total amount of peso funds required to be returned to the Treasurer of the United States pursuant to the aforesaid agreement of June 30, 1948, as extended by the agreement of July 11, 1949. It is further understood and agreed that the total amount of such peso funds will be the sum of all items, including unexpended funds in bank accounts of the National Defense Forces, Republic of the Philippines, which are determined by the aforesaid audit to be payable to the Government of the United States under the aforesaid agreements. The initial payments of principal provided for in Article I hereof shall be applied by the Government of the United States to the liquidation of all items which the aforesaid audit shall establish as representing collections due to the Government of the United States.

It is understood that the National Defense Forces, Republic of the Philippines, will lend full assistance to the United States Philippines-Ryukyus Command in order to effect the speedy completion of such audit.

ARTICLE III

It is understood and agreed by the parties hereto that the acceptance of this agreement by the Government of the Republic of the Philippines shall not be construed as a waiver of its rights to negotiate with the Government of the United States for the settlement of any pending claims which may be outstanding as of the effective date of this agreement. It is further understood and agreed that the obligation of the Government of the Republic of the Philippines to pay any installment in accordance with the provisions of Articles I and II hereof shall not be deferred or

delayed by reason of any negotiations then pending concerning any such claims.

ARTICLE IV

This agreement shall come into effect on the date of signature.

Signed in duplicate at Washington, D. C., this sixth day of November, 1950.

For the Government of the United States of America:

JOHN W. SNYDER.

For the Government of the Republic of the Philippines:

CARLOS P. ROMULO.

[Attachment]

HEADQUARTERS PHILIPPINE-RYUKYUS COMMAND

OFFICE OF THE COMMANDING GENERAL

GSPS APO 707

30 JUNE 1948.

Subject: Advance of Funds from the Appropriation of "Expenses Army of the Philippines" for Fiscal Years 1942–1946.

To: Chief of Staff, Armed Forces of the Philippines, Camp Murphy, Quezon City.

1. Under the provisions of Executive Order 9011 of the President of the United States, dated January 3, 1942,[1] the Commanding General, Philrycom, has from time to time authorized the advance of funds of the United States Government to the Philippine Army out of the appropriation "Expenses, Army of the Philippines", for the fiscal years 1942 to 1946

[1] 3 CFR, Cum. Supp., p. 1073.

inclusive, for the express purpose of paying certain claims adjudicated and approved by the Recovered Personnel Division and the Claims Service of Philrycom which have been submitted for payment to the Finance Service, Philippine Army.

2. In accordance with the written request dated 30 June 1948 of the Philippine Army,[2] the authorized representative of the Government of the Philippines, a check is attached in the amount of ₱93,778,000.00, ₱42,000,000.00 of the attached check for ₱93,778,000.00, together with balance of sums previously advanced to the Philippine Army, is considered sufficient to pay all claims duly adjudicated and approved by the Recovered Personnel Division and the Claims Service, Philrycom, and forwarded to your headquarters on or before 30 June 1948. The remainder of this check amounting to ₱51,778,000.00 is advanced for the sole purpose, except as provided in paragraph 3 of this letter, of paying additional amounts due on redeterminations approved by the Recovered Personnel Division and the Claims Service, Philrycom, as a result of reconsideration of claims filed before administrative deadlines of 15 January 1948 and 29 February 1948 for claims for arrears in pay pertaining to living and deceased veterans respectively, and 31 March 1948 for all other claims.

3. Procedures in effect prior to 30 June 1948 have allowed your headquarters to make payments for current pay, terminal date guerilla pay, and other liberation pay without approval of this headquarters. Subsequent to 30 June 1948 it is understood that your headquarters will make no payments on these specified types of claims without specific approval in each case by the Recovered Personnel Division, Philrycom. You are authorized to continue payments for claims for

[2] Not printed.

current pay, terminal date guerilla pay, and other liberation pay claims now on hand provided vouchers were filed and approved by your headquarters on or before 30 June 1948.

4. It is understood and agreed that the Philippine Army will furnish to the proper authorities of the Government of the United States of America abstracts of all claims paid under this Agreement, and to make available for inspection by representatives of the Government of the United States of America all records pertaining to the settlement of all claims or obligations included herein for the period of five years following 30 June 1948.

5. It is understood and agreed that all sums which have been, or herein advanced, to the Philippine Army from the above-mentioned appropriations, in excess of the total amount of the claims approved by the Recovered Personnel Division and Claims Service and paid by the Philippine Army as outlined above, will be returned to the Treasurer of the United States upon written request of the appropriate agency of the United States Government, but in no event later than 30 June 1949.

6. Acknowledgment of receipt of the check and concurrence in this communication is requested by indorsement hereon.

GEO. F. MOORE,
Major General, U. S. Army, Commanding.

1st Ind

HEADQUARTERS, NATIONAL DEFENSE FORCES, REPUBLIC OF THE PHILIPPINES, CAMP MURPHY, QUEZON CITY

To: Commanding General, Philippines-Ryukyus Command, APO 707.

1. The receipt of United States Treasury check No. 502972 for ₱93,778,000.00 is hereby acknowledged.

2. Headquarters National Defense Forces, the authorized representative of the Government of the Republic of the Philippines, in accepting this check agrees to all the provisions and conditions as set out in basic communication.

R. JALANDONI,
Major General, Chief of Staff.

[Attachment]

11 JUL 1949.

Subject: Funds from the Appropriation of "Expenses, Army of the Philippines", for Fiscal Years 1942–1946.

To: Chief of Staff, Armed Forces of the Philippines, Camp Murphy, Quezon City.

1. Under the provisions of Executive Order 9011 of the President of the United States, dated January 3, 1942, the Commanding General Philrycom from time to time authorized the advance of funds of the United States Government out of the appropriation "Expenses, Army of the Philippines" for the fiscal years 1942 to 1946 inclusive, for the express purpose of paying certain claims adjudicated and approved by the Recovered Personnel Division and Claims Service of Philrycom which were submitted for payment to the Finance Service, Philippine Army.

2. On 30 June 1948 a check in the amount of $93,778,000.00 was turned over to the Philippine Army which, with the balance of sums previously advanced, was considered sufficient to pay all claims duly adjudicated and approved by the Recovered Personnel Division and the Claims Service, Philrycom and such additional amounts due on redeterminations approved by the Recovered Personnel Division and the Claims Service, Philrycom, provided such claims had been originally filed before the administrative

deadlines of 15 January 1948, and 29 February 1948, for claims for arrears in pay pertaining to living and deceased veterans respectively, and 31 March 1948 for all other claims.

3. It was understood and agreed by written agreement between the Commanding General, Philrycom and the Chief of Staff, AFP dated 30 June 1948, that all sums which were advanced on 30 June 1948, or previously, in excess of the total amount of the claims approved by the Recovered Personnel Division and Claims Service would be returned to the Treasurer of the United States upon written request of the appropriate agency of the United States, but in no event later than 30 June 1949.

4. The agency now approving claims formerly approved by the Recovered Personnel Division and Claims Service is the Adjustment Division of the Adjutant General Records Depository.

5. It is considered expedient to modify the agreement entered into on 30 June 1948 by authorizing further payments from the funds previously advanced and by changing the date upon which the unexpended balance is to be returned to the Treasurer of the United States.

6. You are authorized to make payments from these funds on such arrears in pay, and procurement and wage claims as were submitted to the Adjustment Division, Adjutant General Records Depository before 30 June 1949 and are duly adjudicated and approved by the Adjustment Division, Adjutant General Records Depository, as payable from the above funds, and sent to the Philippine Army for payment before 1 December 1949.

7. It is understood and agreed that the Philippine Army will furnish to the proper authorities of the Government of the United States of America abstracts

of all claims paid under this Agreement, and to make available for inspection by representatives of the Government of the United States of America all records pertaining to the settlement of all claims or obligations included herein for the period of five years following 30 June 1949.

8. It is understood and agreed that all sums which have been advanced to the Philippine Army out of the appropriation "Expenses, Army of the Philippines" for the fiscal years 1942 to 1946 inclusive, in excess of the total amount of the claims previously approved for payment and those which may be approved for payment by the Adjustment Division, AGRD, and paid before 31 December 1949 will be returned to the Treasurer of the United States, at one time or in increments, upon written request of the appropriate agency of the United States Government, but in no event later than 31 December 1949.

GEORGE D. SHEA,
Major General, USA, Commanding.

1st Ind

HEADQUARTERS, NATIONAL DEFENSE FORCES, REPUBLIC OF THE PHILIPPINES, CAMP MURPHY, QUEZON CITY

To: Commanding General, Philippines Command, APO 707.

Headquarters, National Defense Forces, the authorized representative of the Government of the Republic of the Philippines, agrees to all the provisions and conditions as set out in basic communication.

M. N. CASTANEDA,
Major General, Chief of Staff.

APPENDIX E

The following material is extracted from Hearings held on October 6 and 9, 1941, by the House Committee on Insular Affairs, 77th Congress, First Session, on H. R. 5722, a bill to amend Section 19 (A) of the Philippine Independence Act and the Act of June 19, 1934, to make available certain sugar excise funds to finance the mobilization of the Philippine Commonwealth Army. This bill, which was amended and reintroduced as H. R. 5825 (H. Rept. 1309, 77th Cong., 1st Sess.), was subsequently abandoned when Congress provided an appropriation from general funds for support of that Army on December 17, 1941 (55 Stat. 810, 813):

* * * * * *

STATEMENTS OF BRIG. GEN. L. T. GEROW, ASSISTANT CHIEF OF STAFF, WAR PLANS DIVISION, WAR DEPARTMENT; COL. C. A. RUSSELL, WAR PLANS DIVISION, AND COL. R. S. MOORE, FINANCE DEPARTMENT

General GEROW. Mr. Chairman, and members of the committee, I am present on behalf of the Secretary of War and the Chief of Staff, to explain the purpose of H. R. 5722, a bill to authorize the appropriation of certain sugar excise tax funds and other funds, to be used for military and naval-defense purposes in the Philippine Islands.

Under the act of March 24, 1934, better known as the Tydings-McDuffie Act, complete independence of the Philippine Islands will become effective on July 4, 1946. To insure the readiness of the Philippine Commonwealth to provide for its own defense in 1946, Gen-

eral MacArthur, former Chief of Staff of the United States Army, was appointed military adviser in 1935. From that time to the present General MacArthur has been engaged in planning and in part organizing the Philippine Islands for self-defense. During that period and up until recently, the American forces in the Far East consisted of Regular Army forces, numbering approximately 6,000, and the Philippine Scouts, consisting of 6,400 native Filipinos.

During 1940, due to the growing tenseness of the world situation, President Quezon became concerned over the defenses of the Philippine Islands, particularly as to the state of readiness of the Philippine Army. His concern, in part, was founded upon the limited training which the Philippine Commonwealth had been able to finance for the Philippine Army and the failure of the United States Government to augment existing defenses. This concern resulted in a message from him to the President of the United States, requesting the assistance of the Federal Government in the defense program of the Philippines. President Quezon offered at that time to participate to the fullest extent possible in any program undertaken by the United States Government, and to that end suggested the augmentation of the ordinary budget of the Commonwealth—subject to the approval of the President and the Congress of the United States—by assets now held in trusteeship by the United States, authorized for appropriation but not yet available for expenditure by the Commonwealth.

The funds referred to were sugar-excise-tax funds and refunds incidental to the devaluation of the dollar, mentioned in the bill now under consideration. Section 6 of the act of August 7, 1939, amending the Philippine Independence Act of March 24, 1934, stated in part

that the proceeds of the excise tax were to be used by the Philippine Government in adjusting the economic position of the Philippines and in preparing those islands for the assumption of the responsibilities of an independent state. One of the most important obligations of a sovereign state is the protection of its national territory.

With the approval of the President, the Secretaries of the Treasury, of the Interior, and of State, and the United States High Commissioner to the Philippine Islands, a program of expenditure for the emergent mobilization and training of the Philippine Army and related defense activities, totaling in all some $52,000,000, was prepared in June 1941, in joint conference of Army and Navy officers in the Philippines, the United States High Commissioner, and Mr. Quezon. The general plans for augmenting the defenses of the Philippine Islands were reviewed by the Joint Board and, after approval by other interested agencies of the Federal Government and the President, the subject legislation was presented to the Congress, recommending its enactment.

Specifically, this bill will authorize the appropriation of some $57,000,000 of sugar-excise-tax and dollar-devaluation funds for the specific purpose of meeting the costs of mobilization and training of the Philippine Army over a period of approximately 1 year and accomplishing other defense projects contributing directly to the military defense of the Philippine Islands.

With the outbreak of war between Germany and Russia and the possibility of hostilities extending to the Far East, the War Department recommended that the Philippine Army be called into the service of the armed forces of the United States, under the authority contained in section 2 (a) (12) of the act of March 24, 1934, and that preliminary steps for their

mobilization and training be initiated without awaiting congressional action on H. R. 5722 and the appropriation of necessary funds in pursuance to any authorization bill enacted by the Congress.

To finance the mobilization and training of the Philippine Army pending action on the legislation now under consideration the President allocated $10,000,000 from his emergency fund. This bill, H. R. 5722, specifically authorizes reimbursement of the President's emergency fund of any funds allocated therefrom for the purpose.

The Philippine Army was called into the service of the armed forces of the United States on July 26, 1941, by Presidential order, and General MacArthur was assigned to command all the Army forces in the Far East. It was estimated that the $10,000,000 allocated by the President would suffice in all probability to meet mobilization and training expenses until about November 1, 1941. The War Department is accordingly hopeful that additional funds can be provided under the authority of H. R. 5722 prior to that date.

Until 1946 the United States is responsible for the defense of the Philippine Islands. The use of the Philippine Army in providing ground forces within their capabilities relieves the War Department from sending large additional forces from the United States with the additional costs of transportation, equipment, and maintenance. Accordingly, any funds appropriated under the authorization of legislation contained in H. R. 5722 will make corresponding savings in future appropriations for the War Department. Also, the expenditure of these funds for the purposes specified, at the same time will strengthen materially the defense of the Philippines and provide essential training for the Philippine Army, under experienced United States Army officers, thus

preparing the Philippine government to assume in 1946 the national-defense responsibilities of a sovereign state. [Pages 2–4.]

* * * * *

Mr. CRAWFORD. I think you would have one difficulty in convincing this committee, in view of the long struggle which has gone on in connection with sugar and coconut excise taxes in order to provide funds for the Philippines at a time when they are going through the rigors of independence; and, to speak very bluntly, it looks to me here as if the War Department is coming in and making a raid on the funds which we thought we were setting up for the purpose of assisting in the rehabilitation and economic readjustments which go along with independence; and, frankly, I would much prefer to see you provide these military costs through the regular military estimates than to make a raid on these funds. That is about as blunt as I can state it.

General GEROW. Congressman Crawford, the War Department has no idea of raiding the Treasury to get funds when it simply comes to Congress to ask for additional appropriation.

Mr. CRAWFORD. I mean, when you ask us to appropriate these specific funds.

General GEROW. Mr. Quezon himself asks that this be done in order to strengthen the defense of the Philippine Islands so that it might be able to take over the responsibility of an independent state in 1946.

We are asking for the money now because we believe that it is not only necessary that the Philippine Islands be armed at the present time but, by strengthening the defense of the Philippine Islands, it will make them much better prepared to take over the responsibility of an independent state when it is granted. [Pages 9–10.]

* * * * *

Mr. COLE. What is the reason for the provision at the bottom of page 2 exempting the expenditure of these funds from the General Accounting Office?

Colonel MOORE. The Army of the Philippines is organized, paid, and administered in accordance with Philippine Commonwealth laws and regulations.

Mr. COLE. What about the funds?

Colonel MOORE. During the current emergency every established agency of the Philippine Army should, so far as is practical, perform the functions prescribed by Philippine law for such agencies. The rates of pay of the Army of the Philippines are those prescribed by the Commonwealth Act 385. Moreover, it is impracticable to disrupt, during the current emergency, present Philippine practices and procedure, in order that the Philippine Army might comply with the strict procedures prescribed by the General Accounting Office for United States procurements and disbursements. It also appears highly desirable that the individual pay records of the Philippine Army remain in the Philippines in order that records of service may not be scattered.

The proposed measure, if enacted into law, by its terms will not only authorize the only practical method of carrying out the directive contained in the President's military order of July 26, 1941, but also will authorize expenditures from the President's emergency fund in the manner necessarily adopted to carry out the President's directive.

Mr. COLE. All funds appropriated by Congress for the War Department, for use in the Philippines are under the general accounting laws, are they not?

Colonel MOORE. Funds currently appropriated for the Philippine Scouts are handled in precisely the same manner as funds appropriated for our Army here.

The records of the Philippine Scouts are sent here. They are paid by our finance officers. Our quartermasters and signal officers and ordinance officers supply them.

When we call the Philippine Army into the service of the armed forces of the United States, we do not want to disrupt their organization. We want to continue it. We want their finance officers, their quartermasters, and every Philippine agency involved to carry out the same functions that they carry out now. Otherwise, the training would be detrimental rather than helpful.

Also we want to advance funds to the Philippine government so that payments can be made on their own forms and audited by the Philippine auditor, subject to the approval of the commanding general of the United States forces in the Far East and the commandant of the Sixteenth Naval District.

This is the only practical way to handle funds for calling the Philippine Army into the service of the armed forces of the United States. [Pages 14–15.]

* * * * *

STATEMENT OF J. M. ELIZALDE, RESIDENT COMMISSIONER OF THE PHILIPPINE ISLANDS TO THE UNITED STATES

Mr. ELIZALDE. Mr. Chairman, my name is J. M. Elizalde, Resident Commissioner, of the Philippines to the United States. I have a prepared statement that I submitted the other day to the members of the committee, and inasmuch as it is similar in tone to what General Gerow has already introduced in making a general explanation of this bill, I will just ask permission to submit it without reading, in order to save some of the valuable time of this committee. [Page 17.]

* * * * *

* * * First of all, General MacArthur was taken over by the Regular Army, and then the President of the United States issued an order transferring the Philippine Army to the United States Army. I understand they are not considered Federal troops; they are a separate unit, but under the United States Army. * * * [Page 20.]

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSÉ SORIANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

REASON FOR THIS SUPPLEMENTAL BRIEF

On November 13, 1956, the Court, at the suggestion of petitioner,[1] requested both parties to submit briefs on the question of whether petitioner's claim was barred by time as not having been filed within the statutory period. The Government had not heretofore urged in this Court that petitioner's claim was barred nor had the question been raised in the petition for certiorari or in the principal briefs of either side. Petitioner's reason for raising the question himself, and for asking the Court to find that his

[1] The letter to the Court from petitioner's counsel dated November 7, 1956, appears in the Appendix to this brief, p. 60, *infra*.

claim is not barred, is the recent Court of Claims case of *Compania Maritima* v. *United States*, No. 50165, decided November 7, 1956. By this decision the Court of Claims overruled an earlier case and held that a claim of a resident of the Philippines against the United States which accrued during World War II and on which he failed to file suit either within six years of the time when the claim accrued or within three years of the end of the war was barred by the statute.[2] Petitioner fears that even should he prevail on the merits in this Court he would be dismissed by the Court of Claims under the *Compania Maritima* decision. Petitioner has requested that the Court receive briefs and hear argument on the question of whether the claim was filed in time so that if need be it could dispose of both legal issues at the same time.

QUESTIONS PRESENTED

1. Whether and under what circumstances the Court should consider and decide the time limitation issues now raised by the petitioner which were not raised in the petition for certiorari nor considered in this case by the court below.

2. Whether a claim for payment for goods requisitioned by Filipino guerrillas, who were allegedly

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[2] The earlier decision, *Marcos* v. *United States*, 122 C. Cls. 641, motion for new trial denied, 122 C. Cls. 650, one judge dissenting, denied a motion to dismiss, holding that a Filipino claimant could bring suit in the Court of Claims on a claim which accrued over six years earlier during the Japanese occupation of the Philippines. The United States did not seek review in *Marcos*, since the Court of Claims order was interlocutory. The *Marcos* petition was subsequently dismissed on the authority of *Logronio* v. *United States*, 132 C. Cls. 596.

authorized to obligate the United States Government, accrued at the time of the requisitioning or only after a Claims Service of the Army of the United States had disapproved the payment of the claim from funds advanced to the Philippine Government.

3. Whether the United States has consented to be sued on a claim which was not filed within the six-year time period imposed by the statute giving consent to be sued nor filed within the three-year period following the war which is allowed a plaintiff who could not legally bring suit during the war.

STATUTE INVOLVED

28 U. S. C. 2501, 62 Stat. 976, provides in relevant part:[3]

> Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.
>
> * * * * *
>
> A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.
>
> * * * * *

STATEMENT

This action was brought on April 26, 1951, against the United States in the Court of Claims to recover the value of rice and other supplies which were al-

[3] This statute was amended in 1954 to eliminate the language pertaining to referred claims. 68 Stat. 1246.

legedly requisitioned from petitioner, a Philippine citizen, by Filipino guerrillas during the Japanese occupation of the Philippine Islands in World War II. The facts and allegations which bear on the question of whether the suit was filed in time may be summarized as follows:

The petition in the Court of Claims alleges that at various times, from September 1942 to January 1945, Filipino guerrillas requisitioned or commandeered from petitioner supplies with an aggregate value of $119,765.75. It states that at the time of each taking a receipt was given petitioner "and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby" and that payment would be made by the United States Army (R. 2). Petitioner alleges that his "right to recovery is based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof" (R. 3).

With respect to the date on which the cause of action accrued, a question which petitioner in Part II of his brief seeks to raise in this Court, the petition in the Court of Claims states (R. 4):

> XV. That plaintiff, at the time of the claim against the defendant first accrued, was living in the Philippines and remained there from that time throughout the entire occupation of the Islands by the Japanese military forces during all of which period the American courts were inaccessible to him; that plaintiff since the time the claim first accrued up to the present has never gone, resided or done business in the United States.

American troops returned to the Philippines in October 1944. Manila was liberated in February 1945. Hostilities in the Pacific were over on September 2, 1945. On August 6, 1945, the Army Claims Service was given authority to settle certain types of guerrilla claims, including claims for equipment and supplies provided guerrillas by civilians. The Army Claims Service established an administrative deadline of March 31, 1948, to receive claims which were to be approved for disbursement from the appropriated funds advanced to the Philippine Government. On March 30, 1948, petitioner filed a claim for payment for property which allegedly had been commandeered from him in 1942 to 1945. The claim was disapproved as being without merit by the Claims Service on June 21, 1948. The petition below was filed in the Court of Claims on April 26, 1951. This was six years and three months after the date of the last requisitioning, and was five years and seven months after the end of hostilities.

SUMMARY OF ARGUMENT

I

A. As a general rule, this Court should decline to decide issues not considered by the court below nor raised in the petition for certiorari. In exceptional cases, the Court will consider jurisdictional issues on its own motion or other issues implicit in the case which have not been properly raised.

B. Petitioner has asked this Court to receive briefs and hear argument on the issue of whether the claim

is barred by time—an issue which was not considered by the court below, nor raised by either party in the petition for certiorari or in the briefs originally filed in this Court. Petitioner's justification for raising this issue now is his fear that, even if he should prevail on the issue on which certiorari was granted, he would face the probability of being dismissed in the Court of Claims as not having filed within the statutory period. To avoid this possibility, he has asked the Court to resolve that question in his favor at this time.

Should the Court decide in favor of the petitioner on the issue on which certiorari was granted, the Government agrees that the Court might properly go on to consider the issue now raised. If, on the other hand, the Court should agree with the Government that the case must be dismissed for the reasons considered by the court below, it need not go on to consider the time limitation but may defer consideration of that issue to a case in which it was considered and decided by the court below.

C. The difficulties in this Court's considering an issue which was not properly raised are evident in this case. The questions have not been nicely drawn. There has been no occasion for the narrowing of differences and the meeting of opposing contentions. As a consequence, petitioner's brief on the limitations issue does not even allude to the basic argument on which the Government relies—that the statutory consent to sue the United States cannot be expanded by common law principles or by implication.

II

Before discussing the question of whether the six-year period within which suits must be filed in the Court of Claims was extended by virtue of the war, petitioner advances an alternative theory that his claim did not accrue until it was turned down by the Army Claims Service in June 1948. This point was not involved in the Court of Claims' *Compania Maritima* case which formed the basis for petitioner's request that this Court consider the time limitation problem. In fact, a holding for petitioner on this point would remove from the case the general "suspension for war" issue with which *Compania Maritima* deals.

But should the Court wish to consider the point, it is clear from the allegations of the petition below that petitioner's claim accrued no later than January 1945. The submission of petitioner's claim to the Army Claims Service and rejection by it was not a prerequisite to suit in the Court of Claims based upon an alleged taking by the United States. Claims for just compensation arise at the time of the taking, and, unless there is a special statute requiring prior administrative consideration, suits may be filed at once in the Court of Claims. Here, there was no statutory authority requiring consideration by the Army Claims Service; moreover, at the time that the requisitions here allegedly took place, the Army Claims Service had no authority to consider claims of this type. Further, the Army Claims Service was authorized, with respect to claims of this type, only to approve them for payment from funds which the United States had

advanced to the Philippine Government. Finally, petitioner is bound by his pleadings in the Court of Claims, which conceded that the claim "first accrued" during the Japanese occupation.

III

Petitioner does not make clear the legal theory on which he relies in arguing that the statutory period for suits in the Court of Claims is extended as a result of war. Petitioner must contend either that construction of the Court of Claims statute of limitations or some general principle of law outside the statute requires an extension of time for war. We believe that consent to sue the United States after the express statutory period has expired cannot be found on either basis.

A. No common law principle regarding the tolling of limitations can broaden the consent of the United States to be sued. Decisions of this Court prior to *Erie* v. *Tompkins*, applying such a principle to state statutes of limitations, have no bearing on suits against the sovereign which are subject to express conditions and limitations provided by Congress, which may not be relaxed by judicial fiat. No Federal court has knowingly held a common law extension for war applicable to a suit against the United States. Since Congress alone has the authority to determine the basis on which the United States can be sued, an extension of the consent cannot be read by implication into the Court of Claims statute.

B. Nor can the language of the Court of Claims statute be construed as providing an extension for

war. The literal language of 28 U. S. C. 2501 (*supra*, p. 3), which contains no war extension provision, must, as a waiver of sovereign immunity, be strictly construed; and inasmuch as the common law provided no suspension of limitations for war when the statute was first enacted in the early 1860's, Congress at that time could not have intended to incorporate such a provision. Further, Congress has shown, by repeated enactment of Federal limitations which either include expressly or omit suspension provisions for war, that it makes express provisions for such an exception when it means it to be available.

In *Kendall* v. *United States*, 107 U. S. 123, the Court faced the contentions made here by petitioner and decided against them. A supporter of the Confederacy was unable, because of the Civil War and war legislation, to file suit in the Court of Claims during a portion of the six-year statutory period. He contended that he should be allowed six years in which the court was open to him. This Court, pointing out that the United States could not be sued except on the terms to which it had consented, held that the six-year period could not be extended by implication because of the plaintiff's inability to bring suit.

C. The present statute limiting the period within which suits can be filed in the Court of Claims is in no way inequitable for those, like petitioner, whose cause of action accrued at a time when they were denied access to the courts by war. In 1948, the statute was amended so that the special three-year period of grace then applicable to infants and insane

persons would be available to every person who was under a legal disability of any kind which barred his bringing a suit.

That petitioner and others in the Philippines were under a legal disability which prevented their filing suit during the war is clear from the Trading with the Enemy Act. Whether or not petitioner was under any common law disability during the war, this Federal statute imposed a legal disability barring his suit. The Court of Claims has held, and the Government concedes, that the consent to suit statute must be construed as allowing petitioner and others like him a period of three years after that disability was removed. Petitioner did not file within that period, nor within the six-year period after his cause of action accrued. He is not in a position to urge that this three-year period of grace should be read out of the statute.

D. The extension of the consent of the United States to be sued is a matter for legislative action, but were the Court free to read into the statute a judicial exception for war it ought not to do so. Today "war" is not the well-defined concept that it was in the last century. A technical state of war and the practical problem of reaching a court have very little relationship to each other. The problem of those who are legally prevented during war from filing suit was taken care of by the 1948 amendment. Any remaining problem is one of physical inaccessibility of the court. The six-year period is long enough to accommodate most interruptions of that kind. (The entire war here used up less than half of petitioner's six

years computed from the date of the first requisitioning.) Legislative action could deal precisely with any further extension of the consent to sue upon which Congress should decide. A judicial exception would create uncertainty in every other statute establishing a time limitation in actions against the United States.

ARGUMENT

I

THIS COURT SHOULD REACH THE TIME LIMITATION ISSUES ONLY IF IT DECIDES FOR THE PETITIONER ON THE ISSUE ON WHICH CERTIORARI WAS GRANTED

A. AS A GENERAL RULE THE COURT SHOULD AVOID DECIDING ISSUES NOT CONSIDERED BY THE COURT BELOW NOR RAISED IN THE PETITION FOR CERTIORARI

Rule 23, 1 (c) of the Revised Rules of this Court provides that "Only the questions set forth in the petition [for certiorari] or fairly comprised therein will be considered by the court." Rule 40, 1 (d) (2) provides:

> The phrasing of the questions presented need not be identical with that set forth in the jurisdictional statement or the petition for certiorari, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. Questions not presented according to this paragraph will be disregarded, save as the court, at its option, may notice a plain error not presented.

There is no need to expand on these rules nor to argue that the sound administration of justice requires general adherence to them. "Petitioner is not here en-

titled to decision on any question other than those formally presented by its petition for the writ." *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 179.

The Court has the power, of course, to consider on its own motion other issues which may be involved in the case, particularly ones relating to its own jurisdiction or the jurisdiction of the court below. Even where such issues are jurisdictional, however, there is no necessity of the Court's deciding them where the case can be disposed of on the merits. Cf. *Brooks* v. *Dewar*, 313 U. S. 354, 359–360; *Secretary of Agriculture* v. *Central Roig Co.*, 338 U. S. 604, 619–620. It is submitted that the practice of first considering the issues raised in the petition for certiorari and then other issues only if necessary to provide substantial justice is well founded. It would be well not to encourage parties to suggest, shortly before oral argument, additional issues which the Court should consider, but which have not been presented or briefed.

B. IF THE COURT SHOULD AFFIRM THE COURT BELOW ON THE ISSUE ON WHICH CERTIORARI WAS GRANTED, THERE WOULD BE NO REASON TO CONSIDER ANY OTHER QUESTION NOW RAISED BY PETITIONER

The petition below was dismissed *per curiam* by the Court of Claims on the ground that petitioner's cause of action, if any, was against the Republic of the Philippines and not against the United States. It was on this issue that certiorari was sought and granted and on which the principal briefs were submitted. On November 7, 1956, petitioner's counsel wrote the Court (Appendix, p. 60, *infra.*) calling its attention to a

decision of the Court of Claims on that date in *Compania Maritima* v. *United States*, No. 50165. The Court of Claims there held that it had no jurisdiction to consider a petition of a Philippine corporation which was filed more than six years after the cause of action accrued and more than three years after the end of World War II. Petitioner feared that if he were successful on the issue on which he requested certiorari, he would be remanded to the Court of Claims, only to be dismissed as being time barred, and would again have to petition for certiorari on that issue. To avoid that possibility, petitioner has suggested that the Court receive briefs and hear argument on whether the claim is barred. This procedure has been adopted by the Court. It places the Court in a position where, if it finds for the petitioner on the basic issue, it can go on and decide the limitations point now, without requiring petitioner to go back through the Court of Claims and again apply for certiorari.

We have no objection to this procedure. We believe that under those circumstances the Court might properly go beyond the issue raised in the petition for certiorari. We do suggest, however, that the orderly procedure is first to consider the issue raised in the petition for certiorari. Should the Court agree with the Government, and with the court below, that the suit must be dismissed on that ground, the Court need go no further. Petitioner, and the other guerrilla claimants in his position, would have no concern with the period within which suits can be filed. If that issue should remain of sufficient importance to require re-

view by this Court, it could be considered in a case where it was decided below and properly raised in this Court.

The effect of the interjection of the time limitation issue into this case provides the Government with a second basis on which it may prevail, in addition to the merits. A decision for the Government on either ground would dispose of all Philippine guerrilla cases now pending in the Court of Claims.* The suggestion we make as to the order in which the issues should be considered is made in the interest of preserving, to the extent consistent with petitioner's interests, the concept of orderly review provided for in the Rules.

C. THE DISADVANTAGES OF CONSIDERING POINTS NOT RAISED IN THE PETITION ARE WELL DEMONSTRATED IN THIS CASE

The hasty insertion of the question of whether the claim is barred by time has meant that the issues here have not been well drawn. Part II of petitioner's brief argues points which the Government concedes and other points which we consider irrelevant to the decision in this case. More serious, in that it deprives the Court of studied comment to which it is entitled, petitioner's brief fails throughout its 46 pages to advert to the issue which we believe controlling, namely, that this is a suit against the United States and that the United States cannot be sued except to the extent that it has *by statute* consented thereto.

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* If all Philippine guerrilla cases were eliminated by a decision here in favor of the Government on the merits, the limitations point would affect comparatively few other pending cases in the Court of Claims.

Whether the six-year period within which the United States has consented to be sued can be extended by implication as a consequence of facts and circumstances not provided for in the statute is a matter which this Court previously considered of sufficient importance to justify a grant of certiorari. *Standard-Vacuum Oil Co.* v. *United States,* 339 U. S. 157. The Court found that the precise issue there raised turned on facts not contained in the record and remanded the cause to the Court of Claims. We believe the issue here to be one of law adequately raised by the pleadings in the court below, but it does not follow that the Court should now decide a question raised as this one is here. The Court might prefer to wait, if it can do so without injury to petitioner, until the point is necessary for a decision, the area of discussion has been narrowed, and the issue sharpened by the normal grinding of the judicial mill.

II

PETITIONER'S CLAIM ACCRUED NO LATER THAN JANUARY 1945

Before reaching the issue decided by the Court of Claims in *Compania Maritima* v. *United States,* No. 50165, decided November 7, 1956—the issue on which petitioner requested the Court to receive supplemental briefs in this case—petitioner turns aside to present an entirely different argument: that his claim for just compensation under an implied contract did not accrue until its denial by the Army Claims Service in 1948.

It must be pointed out that, should the Court agree with petitioner on this new argument, the issue of *Compania Maritima* is not presented by this case. The Court may decide therefore that petitioner is not now in a position to make the argument that his claim did not accrue until long after the war; that having suggested by his letter to the Court of November 7, 1956 (Appendix, p. 60, *infra*), that this case is controlled by the *Compania Maritima case,* and having asked the Court to receive briefs and hear argument based on that assumption, he is not free now to contend that that issue is not presented. Since we believe, however, that the point has no merit whatever, and that a decision for petitioner on the issue on which certiorari was granted would in fact raise the *Compania Maritima* problem, we do not oppose the Court's consideration of this point. We do suggest that this issue has reached the Court while the door was opened for a worthier and more general issue.

Petitioner's contention made in Point A of his brief (Pet. Br. II, pp. 14–19) is that his claim for property allegedly requisitioned from him by the United States Government in 1942 to 1945 did not accrue until 1948, when an Army Claims Service, to which he had applied three months before, disapproved payment of that claim with funds advanced to the Philippine Government. We believe that the cause of action accrued no later than the date of the last requisitioning, and that in his petition in the Court of Claims petitioner conceded this to be the fact.

1. The petition in the Court of Claims alleged a right of recovery "based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof" under the Fifth Amendment (R. 3). The petition in the Court of Claims also alleged that the claims "first accrued" during the Japanese occupation of the Philippines and during the period when the American courts were closed to the petitioner (R. 4). Thus, the petition both recognized and relied upon the well established principle that a claim based upon the requisition of property accrues at the time of the taking or the delivery of the property to the United States. *United States* v. *Dickinson,* 331 U. S. 745; *United States* v. *North American Co.,* 253 U. S. 330; *United States* v. *Berdan Fire-Arms Co.,* 156 U. S. 552, 570–572.

2. This Court has held that the existence of an alternative administrative remedy does not foreclose an immediate suit in the Court of Claims. *Smithmyer* v. *United States,* 147 U. S. 342, 357–358. Petitioner argues now for the first time in this proceeding that his claim for supplies furnished to Filipino guerrillas did not accrue until it was disapproved by the Army Claims Service in 1948. It is well settled, however, that the existence of an administrative remedy does not prevent accrual of a claim unless exhaustion of the remedy is a prerequisite to judicial relief.

The Army Claims Service was established in the Philippines to handle miscellaneous claims against the Army of the United States and the Government arising out of American military operations. At the time a number of petitioner's claims allegedly arose, the Service had no authority to pass upon claims

arising from guerrilla procurment. It was not until August 1945 that General MacArthur authorized the Service to process such claims for payment by the Philippine Government out of funds advanced for the Philippine Army by the United States.

What was the status of petitioner's claim between January 1945 and August 1945? At that time there was no administrative procedure available, let alone one required by law. Petitioner certainly does not contend that he did not then have a claim that had accrued against the United States. Nor does he admit that, if General MacArthur had never given the Claims Service authority to consider his claim, he would never have had a cause of action. What petitioner contends is that his claim is based upon the Fifth Amendment to the Constitution and the obligation of the United States to pay for goods that are requisitioned in its name. General MacArthur's order, or its absence, could not deprive or postpone the jurisdiction of the Court of Claims over such a claim.

Furthermore, it is not without significance that in reviewing guerrilla procurement claims the Claims Service did not actually pass upon claims against the United States, but only upon claims against funds supplied by the United States to the Philippine Government for payment by that Government. Hence, it is highly unlikely, even in the abstract, that application to the Service would have been a prerequisite to a suit, not against the Philippine Government, but directly against the United States.

Consistently the Court of Claims has held that guerrilla requisition claims arose and accrued at the time

of taking, regardless of whether or not they were first submitted to and passed upon by the Army Claims Service, since the administrative remedy was not a prerequisite to bringing suit. *Tan* v. *United States,* 122 C. Cls. 662, certiorari denied, 344 U. S. 895; *Arribas* v. *United States,* 124 C. Cls. 553. See also *Howard University* v. *Cassell,* 126 F. 2d 6, 9–10 (C. A. D. C.), certiorari denied, 316 U. S. 675; *Southern Pacific Co.* v. *United States,* 67 C. Cls. 414–422, certiorari denied, 280 U. S. 567; *Ylagan* v. *United States,* 101 C. Cls. 294; *Gray* v. *United States,* 124 C. Cls. 313.

The logic of this rule requires little justification, for otherwise claimants would be given an "option as to when they will choose to start the period of limitation of an action against the United States," *McMahon* v. *United States,* 342 U. S. 25, 27, a result clearly repugnant to the policy of repose underlying the statute.

3. None of the cases cited by the petitioner support the proposition advanced by him. *Dino* v. *United States,* 119 C. Cls. 307, on which petitioner appears to place chief reliance (Pet. Br. II, pp. 14, 18), decided only that a petition filed in the Court of Claims seeking compensation in Philippine pesos for supplies furnished Filipino guerrillas did not state facts sufficient to establish a cause of action based on contract or a Fifth Amendment taking. *United States* v. *Clark,* 96 U. S. 37, *United States* v. *Smith,* 105 U. S. 620, and *Scott* v. *United States,* 18 C. Cls. 1, were suits by government disbursing officers for relief from responsibility for loss pursuant to 28 U. S. C. 1496, in which

it was held that such a cause of action accrues when the officer is held accountable for the loss, not when the loss occurs. Finally, *United States* v. *Taylor*, 104 U. S. 216, held that limitation on a claim against the surplus proceeds of a tax sale held by the Secretary of the Treasury in trust for the owner of land, in contemplation of the statute and by analogy to trust doctrines, began to run only on demand against the Secretary.

4. Petitioner's pleadings admit that his claim accrued in or before 1945. His petition in the court below states (R. 2–4):

* * * * *

> VIII. That at the time the various foodstuffs and food supplies, equipment, goods and merchandise in Exhibit "A" were commandeered corresponding receipts were issued to the plaintiff and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the U. S. Army of which said unit was an authorized element;
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> * * * * *
>
> XIII. That the plaintiff's right to recovery is based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof;
>
> * * * * *
>
> XV. That plaintiff, at the time of the claim against the defendant first accrued, was living in the Philippines and remained there from that time throughout the entire occupation of the Islands by the Japanese military forces

> during all of which period the American courts were inaccessible to him; that plaintiff since the time the claim first accrued up to the present has never gone, resided or done business in the United States;
>
> * * * * *

The only fair reading of this language, we believe, is that petitioner was asserting a claim based on an implied contract in a Fifth Amendment taking during the Japanese occupation of the Philippines, and that an essential element in his complaint was the assertion that the claim *accrued* during the period of the Japanese occupation prior to the liberation of Manila in February 1945, a period during which petitioner was denied access to the American courts.

We submit that in the present posture of the case, petitioner should be bound by his pleadings. He should not be free to raise in this Court at this stage an issue which was (1) not raised by the pleadings, (2) not decided by the court below, (3) not raised in the petition for certiorari, and (4) not raised in his letter of November 7, 1956, requesting the Court to consider the issue in *Compania Maritima*.

III

THE UNITED STATES HAS NOT CONSENTED TO BE SUED ON THIS CLAIM WHICH WAS FILED MORE THAN SIX YEARS AFTER IT ACCRUED AND MORE THAN THREE YEARS AFTER THE END OF THE WAR

Part II of petitioner's brief fails to make clear the legal theory on which he relies in contending that the

statutory period for suits in the Court of Claims is extended as a result of war. The brief refers on one hand to a "rule of common and public law" (Pet. Br. II, p. 28), and on the other hand to what "Congress intended" (Pet. Br. II, p. 45). There is no objection to petitioner's relying on alternative theories, but if the statutory period of consent to suit in the Court of Claims is extended for those who, for a time, are precluded by war from bringing suit, it must be either by virtue of some principle of law outside the statute, or by construction of the statute itself, 28 U. S. C. 2501, *supra*, p. 3. It is not contended that there is any other federal statute which amends 28 U. S. C. 2501, or which specifically confers upon those in petitioner's position the right to sue after the six-year period has expired. In these circumstances, there is no third alternative available. The right he seeks must either be conferred upon him by non-statutory law, or it must be found in the construction of Section 2501. It is our position that consent to sue the United States after the express statutory period has expired cannot be found in either way.

A. NO NON-STATUTORY PRINCIPLE OF COMMON LAW CAN BROADEN THE CONSENT OF THE UNITED STATES TO BE SUED

1. *Hanger* v. *Abbott and succeeding cases were based on the theory of a general public law applicable in all states; a theory which has now been abandoned*

The keystone of any argument that a time limitation is suspended during war is the decision of this Court in *Hanger* v. *Abbott*, 6 Wall. 532. That case, and a number of decisions which followed it, form

the sole basis for any statement that there is a common law rule that periods of limitations are suspended as between opposing belligerents during war. When the reasoning of these cases is examined, they will be seen to have arisen out of the special circumstances of the Civil War and to be based on the principle of a general federal common law which this Court has abandoned since *Erie* v. *Tompkins*, 304 U. S. 64. At most, the cases represent a view of the common law which would have no bearing on suits against the United States, which must be based on a statutory exception to the common law.

Hanger v. *Abbott* was a suit filed in 1865 in the Federal court in Arkansas by a New Hampshire plaintiff against an Arkansas debtor on a cause of action arising in 1859. The applicable Arkansas statute of limitations was three years. On June 11, 1864, Congress had passed a statute providing:

> That whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person who, by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings, cannot be served with process for the commencement of such action or the arrest of such person, or whenever, after such action, civil or criminal, shall have accrued, such person cannot, by reason of such resistance of the laws, or such interruption of judicial proceedings, be arrested or served with process for the commencement of the action, the time during which such person shall so be beyond the reach of legal

> process shall not be deemed or taken as any part of the time limited by law for the commencement of such action [13 Stat. 123].

Rather than rely on this statute (which the court later found valid and applicable in such circumstances, *Stewart* v. *Kahn,* 11 Wall. 493; *United States* v. *Wiley,* 11 Wall. 508), the Court treated the issue as one to be decided on broad principles of law.

The Court pointed out that the English statute of 21 Jac. 1, c. 16, of 1623, on which most American statutes of limitations were based, had no exception for war, but that at the time it was adopted debts due an alien enemy were subject to confiscation. It found that such a rule was "condemned by the enlightened conscience and judgment of modern times" (6 Wall. at 536), and that the better view of international law was merely to prohibit an enemy alien from collecting any debts or filing suit during the course of the war. Since during the war the enemy creditor was rendered incapable to sue, "it necessarily follows that the operation of the statute [of limitations] is also suspended during the same period" (6 Wall. at 542).

A prime consideration which appears to have influenced the court in *Hanger* and to which it referred in subsequent cases, *Stewart* v. *Kahn,* 11 Wall. 493, 507; *United States* v. *Wiley,* 11 Wall. 508, 514, was that the Court would not countenance a situation in which those disloyal to the Union would be absolved of their debts as a consequence of their disloyalty:

> Unless the rule be so, then the citizens of a State may pay their debts by entering into an insurrection or rebellion against the govern-

> ment of the Union, if they are able to close the courts, and to successfully resist the laws, until the bar of the statute becomes complete, which cannot for a moment be admitted [6 Wall. at 542].

It is apparent that the Court did not look at the Arkansas statute or to the decisions of the Arkansas state courts. On the contrary, as this Court later stated in explaining the decision in *Hanger* v. *Abbott*, the question was dealt with:

> * * * as one of public and international law, upon which this court is never obliged to accept the opinion of the state courts [*Bauserman* v. *Blunt*, 147 U. S. 647, 654].

The extent to which the Court at that time considered itself free to ignore the views of a state court in interpreting a state statute of limitations is indicated in *Levy* v. *Stewart*, 11 Wall. 244. There the Supreme Court of Louisiana had repeatedly held that the five-year prescription period on bills and notes was not suspended for war or other causes. This Court, finding that "the reasons assigned for the conclusion are not satisfactory," applied the rule of *Hanger* v. *Abbott*.

The very strangeness of this treatment of the decisions of a state court demonstrates how different the jurisprudence on which those cases were based from that governing the Court today. At the time of *Hanger* v. *Abbott*, the Court viewed the common law principles on which that decision was based as principles of general applicability throughout the country, without regard to state laws, or even federal

statutes.' Today *Hanger* v. *Abbott* is not federal law; in this field the statement in *Erie* v. *Tompkins,* 304 U. S. 64, 78, is correct: "There is no federal general common law." Since *Erie* v. *Tompkins,* the decision in *Hanger* v. *Abbott* must be considered at most as a post-Civil War view as to what the law of Arkansas ought to have been.

2. The principle of Hanger v. Abbott has not been held applicable to a suit against the United States

Because *Hanger* v. *Abbott* and the cases which followed interpret state statutes of limitations in the light of an all pervading Federal common law long since repudiated by this Court, they have no bearing on suits on rights created by Federal statute or on suits against the United States in the Court of Claims.

Before considering the question of suits against the United States, it may be well to consider and lay to one side cases applying the *Hanger* v. *Abbott* common law doctrine to suits between private individuals where the right is created by statute.

Where the right is created by state statute, the question today is one of the interpretation of state law. Some states hold that where a time limit goes to the substance of the right involved it is not tolled by war conditions. See *Poccardi* v. *Ott,* 83 W. Va. 166, 98 S. E. 69, and cases cited, annotations, 132 ALR 317, *et seq.;* other state cases have held limitations sus-

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[1] The *Protector,* 9 Wall. 687, allowed *Hanger* v. *Abbott* to extend the time allowed by the Judiciary Act of 1789, as amended, to appeal to this Court from a circuit court. In *United States* v. *Wiley,* 11 Wall. 508, the common law principle was held to extend the time within which the United States could pursue a statutory remedy on a marshal's bond.

pended during war as to both the right and the remedy, *e. g., Siplyak* v. *Davis,* 276 Pa. 49, 119 Atl. 745; and one federal court prior to *Erie* v. *Tompkins,* in considering a state death statute, applied the *Hanger* v. *Abbott* doctrine in a suit between private parties. *Borovitz* v. *American Hard Rubber Company,* 287 Fed. 368 (N. D. Ohio, 1923).

The better rule, where both the right and remedy are part of a single statutory instrument, is exemplified by the Ninth Circuit's decision construing the Alaska Workmen's Compensation Act in which the court properly held that a common law doctrine cannot affect or add to a right which is the creation of a statute. The court said:

> The right of action created by the Alaska act is wholly statutory, and must be accepted with all the conditions and limitations imposed by law. * * * This requirement of the statute is absolute and unconditional. If the notice is not served, there is no right of action, and pleas of war conditions, waivers, and estoppels are of no avail [*Rogulj* v. *Alaska Gastineau Mining Co.,* 288 Fed. 549, 550–551 (C. A. 9)].

This holding is consistent with the well-recognized general rule that, where a statute creates a cause of action unknown at common law, a period of limitation in the statute is regarded as a matter of substance limiting the right as well as the remedy. *Engel* v. *Davenport,* 271 U. S. 33, 38; *Central Vermont Ry.* v. *White,* 238 U. S. 507, 511. Filing a complaint within the prescribed period is a condition precedent to recovery, and the cause of action is extinguished after

the running of the period. *A. J. Phillips Co.* v. *Grand Trunk Western Railway Co.*, 236 U. S. 662; *Kansas City Southern Railway Co.* v. *Wolf*, 261 U. S. 133; *Davis* v. *Mills*, 194 U. S. 451; *The Harrisburg*, 119 U. S. 199; *Bell* v. *Wabash Ry. Co.*, 58 F. 2d 569 (C. A. 8); *Zellmer* v. *Acme Brewing Co.*, 184 F. 2d 940 (C. A. 9). Cf. *Standard Oil Co.* v. *New Jersey*, 341 U. S. 428, 432 (fn. 2).

Two federal cases, *Chuchuru* v. *Chutchurru*, 185 F. 2d 62 (C. A. 10); *Salvoni* v. *Pilson*, 181 F. 2d 615 (C. A. D. C.), are cited by petitioner (Pet. Br. II, pp. 26, 27) to support the proposition that all periods of limitation were suspended during World War II by virtue of the common law doctrine of *Hanger* v. *Abbott*. *Chuchuru* involved the application of a Colorado limitation to a right of action not of statutory origin (a suit on a note), and *Salvoni* concerned the question whether a limitation on the right to extend a judgment in the District of Columbia Code could be suspended. Neither case involved a suit against the United States, and neither has any bearing on whether the time period within which the United States has consented to be sued can be extended by implication.*

Only one modern decision in any court has held that a period of limitation provided in a federal statute which creates a substantive right is suspended

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* In two Civil War cases the Court of Claims found petitioners barred by time even if *Hanger* v. *Abbott* were applicable. The short dictum in each case omits mention of the principle that the United States cannot be sued except to the extent it consents thereto. *Sierra* v. *United States*, 9 C. Cls. 224, 230; *Green* v. *United States*, 17 C. Cls. 174, 197.

by virtue of the common law doctrine of *Hanger* v. *Abbott*. *Osbourne* v. *United States, et al.*, 164 F. 2d 767 (C. A. 2). A libel had alleged that the libelant was injured on board a ship operated by a general agent of the United States in December 1941, interned by the Japanese on December 8, 1941, and allowed to return to the United States only in October 1945. The court recognized the general rule that, where a statute creates a cause of action, the period of limitations is a matter of substance limiting the right as well as the remedy. 164 F. 2d at 768–769. Suit was brought in July 1946. The court held in those circumstances that either the two-year period of limitations in the Suits in Admiralty Act (46 U. S. C. 745) or the three-year period under the Jones Act (46 U. S. C. 688, 45 U. S. C. 56) was suspended by virtue of the *Hanger* doctrine, without deciding which statute applied to the action.

It is believed that the decision in *Osbourne* v. *United States* is wrong, and that, where a substantive right is created by Federal statute, the time period involved cannot be extended by virtue of any common law rule, particularly when that right is part of a general consent to suit against the United States.[7] The

[7] The United States did not apply for certiorari in the *Osbourne* case for various reasons, including the fact that the decision came at an interlocutory stage of the proceedings on pleadings which alleged that the libelant was a prisoner throughout the war. The Government preferred to bring the case, which was in conflict with other decisions, to this Court after trial which would disclose that the libelant for about a year had the freedom of the City of Shanghai and could readily have communicated with the United States. The case was dismissed subsequent to the Court of Appeals decision, when the libelant settled for $500.

case is distinguishable, however, since the Court of Appeals did not actually pass upon the applicability of the suspension, as against the United States. Although the United States was a nominal party to the suit, the real parties in interest were the libelant and an underwriter, who was responsible to both the United States and the general agent, American President Lines. Because of this factor, the sole argument advanced to the court was based on the distinction between common law rights and statutory rights. Neither the court, nor the briefs of either party, suggested that the case be considered as one against the United States in which the doctrine of a limited consent to be sued was applicable.[8] The decision, therefore, at most holds that a period of limitation would be suspended by war in suits affecting private rights.

Moreover, in reaching its decision, the court in the *Osbourne* case assumed that "there would be no doubt that a Japanese citizen * * * would have been able to sue for similar injuries." 164 F. 2d at 769. The reasoning of the court was thus based on the assumption that the *Hanger* doctrine would automatically suspend the statute of limitations under the Jones Act for an opposing belligerent, a conclusion which we strongly oppose in this case. We submit that

[8] At the time of the suit, it was assumed that the general agent, and hence the underwriter, was independently liable, whether or not the libel was dismissed as against the United States. Since *Cosmopolitan Shipping Company* v. *McAllister*, 337 U. S. 783, the general agent would not be liable under the Jones Act, and the United States would be the real party in interest.

where rights between private citizens are conferred by a statute which contains a time period within which suit must be filed, the expiration of that time period destroys the statutory right, and that no common law doctrine can extend the right conferred by statute.

Regardless of whether this general proposition is accepted by the Court, the *Osbourne* decision has no applicability to this case. Here, the petitioner is not suing another private individual on a statutory claim but is suing the United States, which at common law was not subject to suit and which can only be sued to the extent that consent has been expressly granted by statute.

3. *Consent to sue the United States is granted only by statute, and is limited by the terms of the statute*

That the United States cannot be sued except to the extent that it confers consent by statute is so well established that no citation is necessary. The point to be emphasized here is that the consent must be by *statute,* not by some general principle of common law. As this Court said in construing the Federal Tort Claims Act, " * * * our reasoning * * * starts from the accepted jurisprudential principle that no action lies against the United States unless the *legislature* has authorized it." *Dalehite* v. *United States,* 346 U. S. 15, 30. [Emphasis added.] In *United States* v. *Shaw,* 309 U. S. 495, this Court pointed out that consent to suit must be given by legislative action, not judicial rule making:

> As a foundation for the examination of that question we may lay the postulate that with-

> out specific *statutory* consent, no suit may be brought against the United States [309 U. S. at 500–501]. [Emphasis added.]
>
> * * * * *
>
> It is not our right to extend the waiver of sovereign immunity more broadly than has been directed *by the Congress* [309 U. S. at 502]. [Emphasis added.]

See also *Moffat Tunnel League* v. *United States,* 289 U. S. 113; *Morrison* v. *Work,* 266 U. S. 481; *Bigby* v. *United States,* 188 U. S. 400.

Hanger v. *Abbott,* as we have already noted, held that the Arkansas limitation period was suspended because hostilities denied a Northern plaintiff access to the Arkansas court. Ten days after that decision, its author, Justice Clifford, wrote the opinion for the Court in *United States* v. *Eckford,* 6 Wall. 484, involving a set-off against the United States in excess of the original claim on which the United States had brought suit. The Court pointed out that jurisdiction could not be exercised in a suit against the United States "unless the plaintiff can bring his case within some act of Congress," 6 Wall. at 488, and held that judgment could not be entered against the United States for the excess of the set-off beyond the original claim. In considering the question of whether the consent to be sued could be broadened by virtue of a common law rule, the Court quoted with favor the following language from *United States* v. *Robeson,* 9 Pet. 319, 324 (6 Wall. at 491):

> This is a question which arises, exclusively, under the acts of congress, and no local law or usage can have any influence upon it.

In view of this language, it is difficult to believe that the Court which issued *Hanger* v. *Abbott* would have applied a common law principle to broaden or extend by implication a statutory consent to be sued in the Court of Claims.

That the doctrine of *Hanger* v. *Abbott* was not applicable to suits against the United States appears to have been clearly recognized by the Court at the very time that it was applying the principle of that case. On January 11, 1875, the Court decided *Ross* v. *Jones,* 22 Wall. 576, holding that the Arkansas statute of limitations was suspended by the Civil War so as to permit a Tennessee plaintiff to file suit more than five years after his cause of action accrued. One week later, on January 18, 1875, the Court decided *Haycraft* v. *United States,* 22 Wall. 81, a case coming up from the Court of Claims in which the petitioner had argued, relying on *Hanger* v. *Abbott,* that he had been prevented by the war and his confederate status from bringing suit earlier on an implied contract to pay for cotton seized by the United States. While the court held that there was no implied promise to pay, its discussion of the time limit on suits in the Court of Claims indicates that it would not apply *Hanger* v. *Abbott* to suits against the United States (22 Wall. at 92):

> The case has been argued to some extent as though it involved the consideration of a statute of limitations. To our minds the question is one of jurisdiction. A sovereign cannot be sued in his own courts except with his consent. This is an action against the United States in

its own Court of Claims. The appellant must, therefore, show that consent has been given to its prosecution. That being done, the jurisdiction of the court is established and he may proceed. Otherwise, not.

It is conceded that the required consent is not contained in the Captured and Abandoned Property Act itself, for the only action there consented to is one to be commenced within two years after the suppression of the rebellion.

It is submitted that the doctrine of *Hanger* v. *Abbott* is a common law principle which has little if any relevance in the federal courts following the decision in *Erie* v. *Tompkins*. As a common law principle, it can have no effect in conferring or extending jurisdiction to sue the United States in the Court of Claims, as this can only be accomplished by act of Congress.

Since permission to file the suit below cannot be based upon a principle of common law, petitioner is left with the argument that Section 2501 of the Judicial Code can be construed to suspend the running of the statutory period during war. We now turn to the question of the construction of that statute.

2. THE STATUTE HERE INVOLVED, 28 U. S. C. 2501, CANNOT BE CONSTRUED TO REACH THE RESULT DESIRED BY PETITIONER

1. *A statute conferring consent to sue the United States is strictly construed*

The statutory time limit on the consent of the United States to be sued in the Court of Claims (28 U. S. C. 2501) reads

> Every claim of which the Court of Claims has jurisdiction shall be barred unless the peti-

> tion thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.
>
> * * * * *
>
> A petition on the claim of a person under legal disability or beyond the seas[9] at the time the claim accrues may be filed within three years after the disability ceases.

Before examining whether 28 U. S. C. 2501 can be construed as petitioner contends, it is well to consider just what that construction is.

In discussing "the correct construction of the statute," petitioner argues that the phrase "during which the Court is open" must be read into the first sentence of the statute (Pet. Br. II, p. 37). In elaboration, petitioner states that it is "clear that Congress intended the statute to mean that every plaintiff is entitled to *six years during which the Court*

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[9] Petitioner does not suggest that the saving provision in the statute for persons "beyond the seas" is applicable to him. Faced with the early cases which had construed this provision in state statutes as eliminating any period of limitation whatever on foreign claims, *e. g.*, *Hopkirk* v. *Bell*, 3 Cranch 454 (suit filed 40 years after date of note); *Hopkirk* v. *Page*, 12 Fed. Cas. 504, F. C. #6697 (C. C. E. D. Va. 1822) (suit filed 43 years after cause accrued); see *Society for the Propagation of the Gospel in Foreign Parts* v. *Town of Pawlet*, 4 Pet. 480, 507 (29 years), it has been consistently held that the "beyond the seas" exception in the Court of Claims statute does not apply to foreigners permanently resident abroad. *Pacifico Co.* v. *United States*, 80 C. Cls. 391; *Obschestwo Wykounskich Metallugicheskich I Mechanicheskich Sawodow* v. *United States*, 89 C. Cls. 541; *Arribas* v. *United States*, 124 C. Cls. 553; See *DeLuca* v. *United States*, 69 C. Cls. 262, 270, certiorari denied, 282 U. S. 862.

is open to him to sue" (*ibid.*). Again, on page 45 of the same brief, petitioner argues that such a construction is what "Congress intended." It follows that petitioner is asserting that Congress intended that there be an implied extension to the consent to suit provided in the Court of Claims statute for whatever period of time that court was closed to a petitioner "because of War or War Legislation" (Pet. Br. II, p. 37).

No principle of law is more firmly established in this Court than that which holds that waivers of sovereign immunity must be strictly construed. When Congress consents to suit being brought against the United States, the limitations and conditions governing such suits are an integral part of the Congressional consent, and must be observed. *Den ex dem. Murray* v. *Hoboken Land and Improv. Co.*, 18 How. 272; *Reid* v. *United States*, 211 U. S. 529; *Choctaw Nation* v. *United States*, 119 U. S. 1; *Munro* v. *United States*, 303 U. S. 36; *Eastern Transportation Co.* v. *United States*, 272 U. S. 675; *United States* v. *Sherwood*, 312 U. S. 584; *McMahon* v. *United States*, 342 U. S. 25. For "no rule is better settled than that the United States cannot be sued except when Congress has so provided" (*Ickes* v. *Fox*, 300 U. S. 82, 96), and the United States' "liability in suit cannot be extended beyond the plain language of the statute authorizing it." *Price* v. *United States and Osage Indians*, 174 U. S. 373, 376; *Eastern Transportation Co.* v. *United States*, 272 U. S. 675, 686. This Court at no time has felt free to read into the language of a Congressional consent exceptions or extensions to the conditions put

by Congress, to comport with its own notion of what obligations the sovereign ought to assume. *Schillinger* v. *United States*, 155 U. S. 163, 166; *Price* v. *United States*, *supra*; *United States* v. *Shaw*, 309 U. S. 495, 502. It has recognized that the Court of Claims statute in particular is "not one of procedure but of jurisdiction whose limits are marked by the Government's consent to be sued," and which must be construed "with that conservatism which is appropriate in the case of a waiver of sovereign immunity." *United States* v. *Sherwood*, 312 U. S. 584, 590–591; *Finn* v. *United States*, 123 U. S. 227; *Kendall* v. *United States*, 107 U. S. 123. Hence, absent any reliable evidence that Congress intended to allow an exception to its six year consent to suit in the Court of Claims other than those expressly mentioned, this Court must assume that no such exception is to be implied, and that the statute must be construed strictly according to its terms.

2. *Congress could not have intended to incorporate in the Court of Claims limitation a doctrine of suspension of limitations during war, since no such doctrine existed when the Act was adopted*

The legislative history of the statute conferring consent to sue the United States in the Court of Claims provides no basis for an implied exception to the time limitation for the benefit of persons precluded by their enemy status from filing suit. 28 U. S. C. 2501 is derived from Section 10 of the Act of March 3, 1863 (12 Stat. 765, 767), which was modeled on and followed closely the 1623 English Statute of

Limitations (21 Jac. I, c. 16). At the time the statute was adopted in 1863, several years prior to the decision in *Hanger* v. *Abbott*, the recognized common law rule, even as between private parties, was that statutes of limitations were not suspended during a war period.[10] Petitioner (Pet. Br. II, pp. 32, 45) recognizes that the statute which Congress adopted was based on the English limitations statute, yet this statute for over 300 years has been construed as not suspended during war.[11] Since we have been unable to find any American case prior to *Hanger* v. *Abbott* which has held that the period in which the courts

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[10] Angell, *Limitations*, 3rd ed. 1854, § 488.

[11] The Limitation Act, 1939 (2 & 3 Geo. VI. c. 21, § 22) repealed 21 Jac. I, c. 16, on which the Court of Claims statute was modeled, but reenacted substantially the same limitation and disability saving provisions. The English statute has always been interpreted as not subject to suspension on any ground, including war, once it has begun to run. *Hornfray* v. *Scroope* (1849) 13 Q. B. 509; *Beckford* v. *Wade* (1805) 17 Ves. 87; 34 E. R. 34, O. C.; *Prideaux* v. *Webber* (1661), 1 Lev. 31. See *Bowring-Hanbury's Trustee* v *Bowring-Hanbury* [1943] Ch. 104, 110. In view of the long-standing interpretation of the English statute, the British Parliament in 1945 enacted a special statute, The Limitations (Enemies and War Prisoners) Act (8 & 9 Geo. VI, c. 16), which expressly provided that statutes of limitations were suspended in suits in which a necessary party was an "enemy or detained in enemy territory". "Enemy" was defined as a person or territory deemed an enemy for the purposes of the British Trading With the Enemy Act of 1939. The 1945 Limitation Act provided that suit could be brought within 12 months after termination of enemy status. This British enactment has its parallel in the 1948 Judicial Code revision, discussed *infra*, pp. 50–52, which provided for an extension of the three-year grace period to "all legal disabilities actually barring suit."

See also THAYER, *The Effect of a State of War Upon Statutes of Limitation or Prescription*, 17 Tulane L. Rev. 416, 439.

are unavailable during war is deducted from the statute of limitations, that case must be taken to have originated the principle here relied upon. Petitioner cites the case of *Hopkirk* v. *Bell*, 3 Cranch 454, to support the statement that "this principle has its origin in the time of the American Revolution" (Pet. Br. II, p. 25). But that case had an entirely different holding. The Court there held that the Treaty of Peace between Great Britain and the United States of 1783, which provided that British creditors should meet with no legal impediment in this country in enforcing their claims, prevented the operation of the Virginia statute of limitations upon British debts contracted before that treaty. The holding was that, under the treaty, all statutes of limitations on claims not previously barred began to run again on the date of the treaty. Under the construction placed upon the treaty, time that had elapsed prior to the Revolutionary War was not counted at all.

There is apparently no case either in England or the United States prior to the adoption of the Court of Claims statute which held that the statutory period would automatically be extended for persons unable to sue because of war. It is difficult to understand how Congress could have intended the statute to be subject to a common law exception which did not exist at the time of its enactment.

3. When Congress intends a period of limitations to be extended because of war, it says so expressly

That Congress did not believe there was any general common law rule suspending all statutes of limitations, as between opposing belligerents, is sup-

ported by the special legislation passed during the Civil War suspending statutes of limitations because of the war. In 1864 Congress specifically provided that the statute of limitations would not run against the plaintiff who could not obtain access to a court (including the Court of Claims), or service on the defendant because of the Civil War. 13 Stat. 123.[12] In the same year, Congress passed legislation providing for suspending the time limitation on presenting claims under the preemption laws during the military service of the claimant. 13 Stat. 35. And in 1867, just prior to the decision in *Hanger* v. *Abbott*, Congress passed legislation extending the time limits for serving out writs of error or appeal in the Federal courts as to an action in any court closed by the Civil War. 14 Stat. 545.

Thus, at the very time when Congress adopted the Court of Claims statute, it was aware of the problem posed by limitation periods during wartime. It dealt with that problem then, as it has since, by special legislation.

Again, in the Trading with the Enemy Act of 1917, Congress suspended limitations in actions involving property situated in enemy countries. 40 Stat. 418. In February 1920, Congress also expressly legislated that all statutes of limitations would be suspended in suits against the railroads during the period of government seizure in World War I. 41 Stat. 461.

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[12] There is reason to believe that the Court relied on common law principles in *Hanger* v. *Abbott*, rather than on this statute because of doubts as to the statute's retroactive validity. These doubts were later resolved. *Stewart* v. *Kahn*, 11 Wall. 493.

Yet, when Congress enacted the Suits in Admiralty Act, nine days later, it did not include a provision for a wartime suspension of the limitation in that statute. 41 Stat. 525, 526.

Finally, during the period of the Second World War and its aftermath, Congress enacted the National Service Life Insurance Act (54 Stat. 1008), and the Federal Tort Claims Act (60 Stat. 842), providing for limitations on suits against the Government without including wartime suspension provisions, as well as the Soldiers' and Sailors' Civil Relief Act (54 Stat. 1178, 1181, 1190), the Wartime Suspension of Limitations Act (56 Stat. 747; 62 Stat. 683, 828), and an amendment to Section 34 of the Trading with the Enemy Act, as amended (60 Stat. 925), all of which provided for suspension of limitation provisions because of war.[13] Congress, if it had wished, in enacting what is now 28 U. S. C. 2501 or in the many amendments to that statute, could have provided for wartime suspension of limitations, as it has in many other enactments. In consenting to be sued on contracts in the Court of Claims, it did not do so.

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[13] The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. App. 501, 525, 573) provided for suspension of limitations in suits by or against servicemen, as well as in tax collection suits against servicemen, during the period of military service. The Wartime Suspension of Limitations Act (18 U. S. C. 3287) suspended limitations governing criminal actions for frauds against the Government during the war period. Section 34 of the Trading with the Enemy Act, as amended (50 U. S. C. App. 34 (a)) suspended limitations in suits against the Alien Property Custodian respecting vested property.

4. The rule of construction sought by petitioner would subject to indefinite extension every statute conferring a limited consent to sue the United States

Petitioner contends that the implied exception in favor of persons to whom war closes the courts "is always read into the limiting clause of all Statutes of Limitations" (Pet. Br. II, p. 38). This contention with its obviously far-reaching implications is forced upon him because there is nothing in the language or the history of the Court of Claims statute suggesting that it should be construed differently from other federal limitations. Quite the contrary, the statute here involved is perhaps the most difficult one in which to find a Congressional intent for an implied exception for war, since it was adopted before there was such an implied exception in any statute.

Since petitioner can find nothing in the statute or its history to support his contention, he is reduced to the assertion that his equities are so great that Congress "must have" intended an exception to meet his situation. It should be noted parenthetically that, if petitioner's case is a test of the equities, he did not file suit in the Court of Claims until more than five years and seven months after the end of the war. It is difficult to see how the war was responsible for his failing to meet the time limitations.

Furthermore, the statute provides a grace period covering all legal disabilities actually barring suit,[14] and in this sense is more liberal than the other stat-

[14] Petitioner argues (Pet. Br. II, pp. 30–37) that his inability to file suit during the war years was not a legal disability in the statutory sense. This contention is discussed below.

utes in which the United States has consented to be sued. For example, in statutes dealing with governmental or private tort liability, and the time limitations thereon, Congress has not seen fit to include any disability provision. Neither the Suits in Admiralty Act, 47 Stat. 420, 46 U. S. C. 745; the Public Vessels Act, 43 Stat. 1112, 46 U. S. C. 782; the Jones Act, 41 Stat. 1007, 46 U. S. C. 688; the Carriage of Goods by Sea Act, 49 Stat. 1207, 1208; nor even the Federal Employers' Liability Act, 53 Stat. 1404, 45 U. S. C. 56, contains disability provisions. Moreover, the courts have rejected attempts judicially to engraft those acts with disability extensions. See *Sgambati* v. *United States,* 172 F. 2d 297 (C. A. 2), certiorari denied, 337 U. S. 933; *Williams, et al.* v. *United States, et al.,* 228 F. 2d 129 (C. A. 4), certiorari denied, 351 U. S. 986; *Kalil* v. *United States,* 107 F. Supp. 966, 967 (E. D. N. Y.); *Wahlgren* v. *Standard Oil Co. of N. J.,* 42 F. Supp. 992, 993 (S. D. N. Y.).[18]

It is clear that petitioner can make no case for a special equity requiring an exception to the limited

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[18] The foregoing cases all deal with actions brought under the Suits in Admiralty Act, Public Vessels Act, Jones Act. The following cases, construing the limitations provisions of the Federal Employers' Liability Act, have denied disability extensions for any reason. *Damiano* v. *Penn. R. Co.*, 161 F. 2d 534 (C. A. 3), certiorari denied, 332 U. S. 762; *Bell* v. *Wabash Ry. Co.*, 58 F. 2d 569 (C. A. 8); *Frabutt* v. *New York, C. & St. L. R. Co.*, 84 F. Supp. 460 (W. D. Pa.); *Alvarado* v. *Southern Pac. Co.* (Tex. Civ. App.) 193 S. W. 1108; *Jordan* v. *Baltimore and Ohio R. Co.*, 135 W. Va. 183, 62 S. E. 2d 806; *Wichita Falls & S. R. Co.* v. *Durham*, 132 Tex. 143, 120 S. W. 2d 803; *Wade* v. *Franklin*, 51 Ohio App. 318, 200 N. E. 644; *Gauthier* v. *Atchison, T. & S. F. Ry. Co.*, 176 Wis. 245, 186 N. W. 619; *Bement* v. *Grand Rapids & Ind. Ry. Co.*, 194 Mich. 64, 160 N. W. 424.

consent granted by this particular statute. He *must* argue that a special exception for war is imposed in every time limit contained in a Federal consent statute. Statutes providing for suits for tax refunds, tort actions, suits under the Alien Property Act and limitations governing actions respecting patents, government property, and commercial paper, all must be subject to an implied extension for war, if any one is. But there is no justification for such a construction in statutes which do not expressly provide for it in waiving the sovereign's immunity from suit.

The suggestion, for example, that during war a general principle of common law announced before *Erie* v. *Tompkins* allows an indefinite time in which to sue for a tax refund under 26 U. S. C., Supp. III, 6511, should at the very least give pause, in view of the complex scheme of rights and remedies provided by Congress in the Internal Revenue Code. Once admit the applicability of the principle, however, there is nothing in the language of either the statute here involved or in 26 U. S. C., Supp. III, 6511 to justify reading a war exception into one provision, but not the other. This observation is equally applicable to many other governmental consents to suit.

Moreover, from time to time throughout the period in which Congress has consented to be sued, Congress has dealt by explicit language with the problem created by war and periods of limitation. We have shown that where Congress intended an exception to the statute of limitations, it provided it. *Supra*, pp.

39–41. Petitioner would require Congress, if it wished to avoid the construction which it urges here, to provide expressly in each statute that the time limitation within which suits against the United States must be filed is *not* to be extended by war. But, in view of the well-recognized principle that no suit can be brought against the sovereign except to the extent and on the terms provided for by statute, Congress was entitled to assume that no implied broadening of the consent would be read into statutes establishing a time limitation for suits against the United States.

5. *The Court has already construed this statute as not permitting the six-year period of consent to be extended, although the court was closed to a claimant as a consequence of war*

The question here involved has, we submit, been decided by this Court. In *Kendall* v. *United States*, 107 U. S. 123, this Court, construing the Court of Claims statute in effect prior to 1948, which for these purposes is identical with the present statute, held that a disability based on an enemy status could not extend the six-year period by implication. The plaintiff in *Kendall* had filed a petition in 1872, six years and eleven months after his claim had accrued. During a portion of this time the Civil War was still in progress. Like petitioner here, Kendall pointed out that because of the war and wartime legislation the Court of Claims was closed to him, and contended that he should be allowed a full six years in which the court was open (107 U. S. at 125):

> His specific contention is, that within the true meaning of the statute his claim was not cognizable by the Court of Claims, and did not ac-

crue, until he was in such position that he could invoke its jurisdiction.

The court was closed to Kendall between January and April 1866 because of the Civil War legislation (12 Stat. 255, 257) prohibiting communication with citizens of rebellious states and thereafter until December 1868 because of the statute adopted during the Civil War denying access to the Court of Claims to those who aided or abetted the Confederacy. The court was first opened to Kendall by the General Amnesty Proclamation of December 25, 1868.[16]

Like petitioner in this case, Kendall filed suit more than six years after his cause of action accrued and more than three years after the Court of Claims was open to him. Like petitioner here, he did not argue that he should be given the benefit of the three-year period of grace for those who had been under specified disabilities; as with petitioner here, that would have done him no good, even if the then specified disabilities had been extended to cover his situation. Like petitioner here, he urged that where the court was closed to him as a consequence of the war and wartime legislation, the Court of Claims statute should be read as assuring him a total of six years during which the court would be open to him. Compare 107 U. S. at 125 with petitioner's brief, Part II, p. 45.

[16] Kendall's cause of action accrued on December 31, 1865, prior to the termination of the Civil War on April 2, 1866 (see *Brown* v. *Hiatts*, 82 U. S. 177). Between those dates, he presumably was under disability as a supporter of the Confederate States by virtue of the Congressional prohibition against commmunication with citizens of rebellious states in the Act of July 13, 1861 (12 Stat. 255, 257, as extended by the Act of July 2, 1864, 13 Stat. 375, 376).

This Court declined to strain the statute as requested by Kendall, and as requested here by petitioner. It found no exception to the six-year period for those to whom the court was closed because of war or enemy status. The Court said (107 U. S. at 125):

> We said in *McElrath* v. *United States*, 102 U. S. 426, that the government could not be sued except with its consent, and that it may restrict the jurisdiction of the Court of Claims to certain classes of demands. The acts in question do contain restrictions which that court may not disregard. For instance, where it appears in the case that the claim is not one for which, consistently with the statute, a judgment can be given against the United States, it is the duty of the court to raise the question whether it is done by plea or not. To that class may be referred claims which are declared barred if not asserted within the time limited by the statute. What claims are thus barred? The express words of the statute leave no room for contention. *Every claim*—except those specially enumerated—is forever barred unless asserted within six years from the time it first accrued. And that there might be no misapprehension as to the intention of Congress, the statute, after enumerating the cases to which the limitation of six years should not apply, declares that "no other disability than those enumerated shall prevent any claim from being disbarred." * * *

That the plaintiff was, "by reason of his connection with the rebellion," unable to comply with the terms upon which "the government had consented to be sued

in the Court of Claims," the Court held, "is his misfortune, and cannot have the effect of enlarging the time fixed by the statute of limitation." The Court continued (107 U. S. at 126):

> His remedy, if the claim be a valid one, is to apply to the legislative department of the government. *The courts cannot, in view of the language of the statute, exclude from computation, on the issue of limitation, the time intervening* between the accruing of the claim in 1865 and the promulgation of the amnesty proclamation. [Emphasis added.]

"In view of the language of the statute," this Court held that it would not imply an extension to the consent to suit granted by that statute in favor of one who was barred from bringing suit, as a matter of law, because of his enemy status.[17]

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[17] There are, of course, certain factual differences between Kendall's situation and petitioner's. Kendall was within the United States, not overseas; during the greater part of the time, he could not bring suit because he could not take an oath due to his enemy status, not because he was then technically an enemy for all purposes. But such differences do not go to the root of the question here involved, and do not distinguish the *Kendall* decision from this case. Kendall, like the present petitioner, could not bring suit, because by virtue of Civil War trading with the enemy legislation and the wartime Court of Claims statute he was regarded prior to the amnesty as an enemy of the United States, *i. e.*, one who could not truthfully take an oath of allegiance. Similarly, petitioner by virtue of public law principles and the Trading with the Enemy Act of 1917 was technically an "enemy" of the United States while he remained under Japanese control. Hence, the two cases present the same issue: whether the Court of Claims statute is suspended during a claimant's inability to bring suit because of an enemy status imposed by law.

The *Kendall* opinion was prepared by Mr. Justice Harlan speaking for a unanimous Court in 1882 during the floodtide of the post-Civil War litigation in which the Court had repeatedly held state statutes of limitations suspendible during the period of hostilities (see *supra*, pp. 22–26). The contrast in inescapable. The Court, recognizing the jurisdictional character of the Court of Claims statute (107 U. S. at 125), refused to imply an exception to the Congressional consent for war since the "express words of the statute leave no room for contention" that all claims except those specified were barred after six years.

C. THE PRESENT STATUTE IS IN NO WAY INEQUITABLE SINCE IT MAKES EXPRESS PROVISION FOR THOSE WHOSE CLAIMS ACCRUE WHILE THEY ARE DENIED ACCESS TO THE COURTS BY WAR

Petitioner argues that a suspension for "war" must be read into 28 U. S. C. 2501 because without such a provision the statute would completely bar those persons against whom the courts are closed by war or hostilities during the limitation period. The statute provides, however, that persons under legal disabilities actually barring suit have an additional three years in which to sue after the courts are again open to them. This period of grace applies equally to those to whom the courts are closed because of their enemy status and to those under other legal disabilities. Petitioner did not avail himself of this grace period, but chose to wait over five years after the courts were open to him before prosecuting his claim. Hence, his suit is barred.

1. *The saving clause of the Court of Claims statute of limitations applies to all legal disabilities actually barring suit*

We have shown that the Court of Claims limitation provision contains a flat prohibition against suits against the Government more than six years after a claim or cause of action arises or accrues, and that no exceptions can be read into the plain and unambiguous language of the statute. Congress, in this same provision, however, has provided an express remedy for those who for no fault of their own are subject to a disability which is recognized by law as limiting or affecting their jural capacities, and hence their ability to take action to protect their legal rights.

The present statute, which was enacted as part of the Judicial Code revision in 1948 (28 U. S. C. 2501) and was in effect when this suit was brought, provides that:

> A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

This provision, in unequivocal language, allows persons whose claims accrue while under legal disability three years in which to bring suit after termination of that disability.[18] The Reviser's Notes on 28 U. S. C. 2501 in the 1948 Code revision state that "the revised language will cover all legal disabilities actu-

[18] Since the existing statute was in effect when the suit was brought, it governs this action, for Congress has the power at any time to withdraw or modify its consent to suit. See *Bruner* v. *United States*, 343 U. S. 112; *Cummings* v. *Deutsche Bank*, 300 U. S. 115. Cf. *Campbell* v. *Holt*, 115 U. S. 620. The existing

ally barring suit" and that a provision excluding disabilities other than those specifically mentioned in the earlier statute had, in view of this fact, been eliminated "as superfluous." [19] On its face, the language of the

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statute is a revision of a former provision (28 U. S. C. 262, 1946 Ed.) which stated:

"Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

[19] The full text of the Reviser's Note is as follows:

"Words 'a person under legal disability or beyond the seas at the time the claim accrues' were substituted for 'married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued; entitled to the claim.' The revised language will cover all legal disabilities actually barring suit. For example, the particular reference to married women is archaic, and is eliminated by use of the general language substituted.

"Words 'nor shall any of the said disabilities operate cumulatively' were omitted, in view of the elimination of the reference to specific disabilities. Also, persons under legal disability could not sue, and their suits should not be barred until they become able to sue. Similar sections of the U. S. Code do not contain any such provision. For example, see section 502 of Title 28 U. S. C., 1940 Ed., incorporated in section 544 of this title. (Footnote continued on next page.)

new exception is broad enough to include a disability imposed on petitioner by an enemy status,[20] and the Reviser's Note demonstrates that it should be given its literal meaning to cover any legal disqualification for bringing suit. This Court has recognized the "authoritative" character of Reviser's Notes, and that the 1948 revision of the Judicial Code, although attempting to avoid revisions of a "controversial nature," made many substantial changes in the Code. *Ex parte Collett*, 337 U. S. 55; *United States* v. *National City Lines*, 337 U. S. 78. See also H. Rept. 1559, 80th Cong., 2d Sess., reprinted following 28 U. S. C. A. 2680; and *Moore's Commentary on the Judicial Code*, pp. 71–84.

2. *The Trading With the Enemy Act imposed a legal disability on petitioner during the period of the Japanese occupation of the Philippines*

Section 3 of the Trading With the Enemy Act of 1917 (50 U. S. C. App. 3; Pet. Br. II, pp. 3–4)

"The section was extended to include claims referred by the head of an executive department in conformity with section 2510 of this title. 80th Congress House Report No. 308." See text following 28 U. S. C. A. 2501.

The comment on the elimination of the references to other disabilities is from the Reviser's Note to the identically-worded revision of 28 U. S. C. 2401. The revisers made another substantive change in the limitation provision in eliminating, for reasons of policy, the prohibition against cumulative disabilities.

[20] That the effect of war in closing the courts subjects an enemy litigant to a "disability" has been repeatedly recognized by this Court in suits between private parties. *Semmes* v. *Hartford Insurance Co.*, 13 Wall. 158, 160 ("legal disability created by war"); *Levy* v. *Stewart*, 11 Wall. 244, 250 ("disability"); *Brown* v. *Hiatts*, 15 Wall. 177, 185 ("disability"); *Ross* v. *Jones*, 22 Wall. 576, 586 ("disability"); *Caperton* v. *Bowyer*, 14 Wall. 216, 236 ("disability").

prohibits during time of war any form of communication or intercourse between any person within the United States and an enemy, including a person residing in enemy-occupied territory.

On March 18, 1942, the Treasury Department issued, under the authority of the Trading With the Enemy Act, General Ruling No. 11 (7 F. R. 2168), which designated "that portion of the Philippine Islands occupied by Japan" as "enemy territory," stated that all individuals within such territory were "enemy nationals," and prohibited trade or communication with such persons. Petitioner admits that he was subject to the Act during the period of the Japanese occupation, and could not have lawfully brought an action in any American court, at least from that date on (Pet. Br. II, pp. 23–28). For "trade or communication" as defined in the Ruling included dealings pertaining to property, evidences of indebtedness, or contracts, and any writing, message "or other communication of any nature whatsoever."

A prohibition of this type issued pursuant to a Federal statute is clearly a legal disability actually barring suit within the meaning of 28 U. S. C. 2501, and petitioner therefore was not without a remedy because he could not sue in the Court of Claims during the Japanese occupation. For any claim arising while he was disabled from suing in American courts, the statute provided a three year grace period following the end of the occupation in which suit

could be brought, a period longer than many statutes of limitation."

The Court of Claims has so held in *Compania Maritima* v. *United States*, No. 50165, decided November 7, 1956. Petitioner attacks the validity of this holding (Pet. Br. II, pp. 30–38) in order to provide a basis for his contention that an exception must be read into the six-year period to avoid hardship to persons barred by hostilities. In the first place, petitioner is hardly in position to challenge a liberal interpretation of the statute solely because that interpretation undermines his own allegations of unfairness. Moreover, as petitioner, under the Court of Claims decision, had three years following the end of hostilities in which to prosecute his claim, he can hardly urge that 28 U. S. C. 2501 as applied to him was so unreasonable or unconscionable that the six-year period in his case must be lengthened by implication.

Petitioner argues, however (Pet. Br. II, pp. 37–38), that the present language of the statute works a hardship on those whose claims accrue prior to the outbreak of hostilities, since they are not entitled to the grace period. Petitioner's claims accrued during the Japanese occupation as did that of the plaintiff in *Compania Maritima, supra*. The short answer to this contention, however, is that the same handicap is placed on persons suffering under other types of

[21] There is no reason apparent on the record why petitioner could not have filed his petition during the three-year period following the liberation of the Philippines ending in September 1948. (It should be noted that his claim had been denied by the Army Claims Service on June 21, 1948.)

legal disability who, although they may be entitled to sue through a legal representative, are often unable to do so as a practical matter while still disabled, as well as on persons to whom the courts may be open and who are actually, although not legally, disabled from bringing an action. *McDonald* v. *Hovey,* 110 U. S. 619; *McIver, et al., Lessees* v. *Ragan,* 2 Wheat. 25.

D. ANY EXTENSION OF A STATUTORY CONSENT OF THE UNITED STATES TO BE SUED SHOULD BE ACCOMPLISHED BY LEGISLATION, NOT BY THE CREATION OF A JUDICIAL EXCEPTION FOR "WAR"

Petitioner concedes that there is nothing in the language of the statute here involved which lends the slightest support to his position. He is urging the Court to find an implied exception, not because of the language, but in spite of the language of the statute. It is submitted that this Court cannot find that the time limitation imposed in the statute in which the sovereign consents to be sued is indefinitely extended by a common law or implied exception. It is also submitted that such a decision would be inconsistent with the firmly established rule of law referred to many times by this Court that the sovereign can only be sued to the extent and upon the terms to which the legislature has agreed.

Assuming, however, that this Court were free to create a judicial exception to the statute, we suggest that it would serve no useful purpose to do so. A judicial exception for persons who are prevented by war or war legislation from filing suits against the United States would not solve the problem as well as it can be solved—and in fact has been solved—by legislative action. Whatever reason may have com-

pelled the Court in 1867 to take no notice of the recently passed legislation suspending the statute of limitations and to announce a new doctrine based on common law principles accomplishing the same result, there is no reason this Court should depart from the 1948 revision of the Judicial Code which provided a three-year period of grace for those like petitioner under legal disability which prevented suit. Whatever the problem which confronted the Court at that time, the problem today is different.

In 1867 an implied exception to state statutes of limitation for the period of the Civil War helped a nation knit itself back together by resuming its commercial relationships where they had been broken off. Today a Court decision extending, where there was "war," the six-year period in which the United States has consented to be sued in the Court of Claims would not only create serious problems in other statutes but would fail to meet the twentieth century problem of foreign and American claimants who have been denied access to the court through no fault of their own.

Today "war" is not the well-defined concept it was thought to be during the last century. The technical status of war and open hostilities are rarely coextensive. The "cold war," with internment and restrictions on travel, is a far greater obstacle to filing a timely suit than many earlier "wars." Because of the "cold war," large numbers of people are not free either to reach the United States, or to communicate with it. The recent fighting in Budapest and Port Said in which the United States was not involved was probably a more real interference with the opportunity of

a resident there to communicate with the United States than conditions in Manila in the summer of 1945, a period which petitioner insists must be added to the six-year time limitation allowed by statute. These uncertainties disclose the inadequacy of any judge-made general exception to deal with the twentieth century problem; it would be difficult to set the limits of a judicial exception read into this statute. Certainly, in the light of today's problems, this Court would hesitate to make it turn on whether there was a technical status of "war." A test of actual hostilities would seem more realistic. But actual hostilities would not cover all the time which petitioner here seeks to have added to his statutory six-year period, nor would it cover the case of those prevented by other forms of governmental action from bringing suit. And there is no conceivable basis for this Court's finding an implied exception to the statutory period for claimants in that category.

The matter is one for legislative treatment. Congress has already extended the three-year disability provision to benefit anyone who is under a legal disability actually barring suit. This has been construed, and we believe rightly, to cover those who like petitioner could not legally bring suit during the war. This Court has already indicated that in deciding who can bring suit in this country during a war it will look to the definition of enemy in the Trading With the Enemy Act. *Ex parte Colonna,* 314 U. S. 510, 511. This statute, and the rulings and orders under it, provide an element of certainty in deciding who could and who could not legally bring suit in the United

States and for what periods they were precluded. Such certainty would be conspicuously lacking in a general common law exception for war judicially implied in all governmental periods of limitation.

Following the 1948 Judicial Code revision, the only category of claimants not entitled to a grace period were those who, by physical circumstances beyond their control, could not reach the court during the six years allotted them. In this connection, it must be remembered that petitioner is not contending that he was prevented by war from timely filing suit. He did not file suit until more than five years and seven months after the end of World War II. He is contending that he must as a matter of law be allowed a period of six years during no part of which was he prevented from filing suit. But the regular six-year period was deliberately made long enough to take care of the various circumstances which might prevent claimants for a period of months or even of several years from filing suit.[22] If Congress should consider that the present statute does not go far enough, there is room for legislative action.

In summary, it is believed that there is no basis for this Court's reading into the statute in which the United States consented to be sued the implied exception requested by petitioner. It is submitted that

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[22] Petitioner seeks a special implied exception to take care of him, who filed in April 1951, but which would not take care of those other numerous Philippine claims which were filed in October 1951 and thereafter. Even accepting petitioner's position, it would require legislative action to allow the Court of Claims to consider such petitions.

such an exception would serve no useful purpose. It would cast doubt and uncertainty into all Federal statutes prescribing definite time periods within which certain action must be taken and would fail to deal with the general problem presented by those unable to reach the courts through no fault of their own, a class of persons not including the present petitioner who failed to file suit until more than five and a half years after the war.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that, should the Court reach the question, it should find that petitioner's claim is barred by time and that the judgment of dismissal below should be sustained.

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DECEMBER 1956.

APPENDIX

PETITIONER'S LETTER REQUESTING THE COURT TO RECEIVE BRIEFS AND HEAR ARGUMENT ON WHETHER THE CLAIM IS BARRED BY TIME

NOVEMBER 7, 1956.

In re *Jose Soriano* v. *The United States,* October Term, 1956—No. 49

The CLERK,
The SUPREME COURT OF THE UNITED STATES,
Washington, D. C.

DEAR SIR: The decision of the United States Court of Claims of this day in *Compania Maritima* v. *United States,* C. Cls. No. 50165, is being called to the attention of this Court because of its possible effect upon *Jose Soriano* v. *United States,* on the November Calendar for argument November 15, 1956.

In 1952, in *Marcos* v. *United States,* 102 F. Supp. 547, the United States Court of Claims held that, in claims against the United States for payment on account of requisitions of recognized, organized guerrillas in the Philippines during the War against Japan (1) the statute of limitations was suspended from the date of a requisition made after December 7, 1941, until September 2, 1945, the date of the surrender of Japan; (2) the general six-year statute of limitations applied and not the three-year statute of limitations relating to disabilities; and (3) claims filed in the United States Court of Claims prior to September 2, 1951, were timely filed and within its jurisdiction.

Shortly thereafter, the decision in *Victorio* v. *United States,* 106 F. Supp. 182, to the effect that the

Court of Claims had jurisdiction of such claims became the law of that Court—a decision reversed in *Logronio* v. *United States,* 133 F. Supp. 395, upon the basis of which that Court dismissed the claim of *Soriano* v. *United States,* which is now the subject of review by this Court.

On November 7, 1956, the United States Court of Claims reversed its decision in the Marcos case, *supra,* in *Compania Maritima, supra,* holding that war does not suspend the statute of limitations, but is a disability, and that the three-year statute of limitations relating to disabilities applies from September 2, 1945, when the disability, *War,* ended, and not the six-year statute of limitations. Two judges dissented.

The petition in *Soriano* was filed April 26, 1951, more than three years, but less than six years, thereafter, i. e., September 2, 1945.

This decision is in clear conflict with many decisions, including such decisions arising out of World War II as *Osbourne* v. *United States,* 164 F (2) 767, *Salvoni* v. *Pilson,* 181 F (2) 615 (Cir. Ct. D. C.), cir. den. 339, U. S. 981, and *Chuchuru* v. *Chutchurru,* 185 F (2) 62, (Cir. Ct. 10th Cir.).

Respondent, in *Soriano* v. *United States,* raised the question of the statute of limitations as an affirmative defense. There was no occasion to raise or argue that issue in this Court, as the Court below had not passed upon it in the subject case, as petitioner was considered by the Court of Claims to have filed a timely claim, as the law *then* stood, and the claim had been dismissed on other jurisdictional grounds. Had the Court of Claims held, in the subject case, as it *now* holds, respecting the statute of limitations, such decision would have been an additional grounds for the granting of the Petition for Writ of Certiorari and would now be subject to the consideration of this Court.

Would the Supreme Court consider:—

(1) Postponing the date of argument in the *Soriano* case for a short period of time, permit the filing of briefs and argument on the additional question of the statute of limitations applicable in the subject case and grant an additional fifteen minutes of time to each party for argument on this subject; or, in the alternative,—

(2) Permit the filing of briefs on the question of the statute of limitations *after* the argument in *Soriano* and the submittal of that question on the briefs?

Of the three affirmative defenses raised by respondent, the first is a question of fact to be determined in a trial on the merits, respondent having the burden of proof; the second is the subject of the present review; and the third is the question of the statute of limitations.

A decision on the question of the statute of limitations would dispose of all legal questions in the subject and related cases. If it is not disposed of in the *Soriano* case, the law of the Court of Claims will require the petitioner, if successful in the present review, to again petition this Court for a writ of certiorari, by reason of the clear conflict with the above cited decisions of the United States Circuit Courts of Appeals for the Second and Tenth Circuits and the District of Columbia. If the Court should decide the question on its own motion, by reason of the fact that it is an issue presented by the pleadings and that jurisdiction of the United States Court of Claims is involved, the Court will not have had the views of the petitioner on this subject, but only the views of respondent, as expressed by the Court of Claims, unless one of the two alternatives above be acceptable to this Court.

Petitioner requests the opportunity to file a brief upon the subject to aid the Court in its decision, rather than have the Court decide this question on its own motion, as it did in *Blake* v. *United States,* 14 C. Cls. 462, affd. 103 U. S. 227, 237, or have the decision in *Compania Maritima* influence in any way its decision on the fundamental issue in the *Soriano* case, i. e., whether the United States is liable for requisitions of organized recognized guerrillas for military operations in the Philippines made in the name of the United States Armed Forces.

Respectfully,

PLEW SAVOY,
Attorney for the Petitioner.

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